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COMMISSION OF INQUIRY INTO THE
USE OF DRUGS AND BANNED PRACTICES
INTENDED TO INCREASE ATHLETIC PERFORMANCE

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HEARING HELD AT 1235 BAY STREET,
TORONTO, ONTARIO,
ON THURSDAY, JANUARY 12, 1989

- VOLUME 3 -

B E F O R E:

THE HONOURABLE MR. JUSTICE CHARLES LEONARD DUBIN

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THE HONOURABLE MR. JUSTICE CHARLES LEONARD DUBIN

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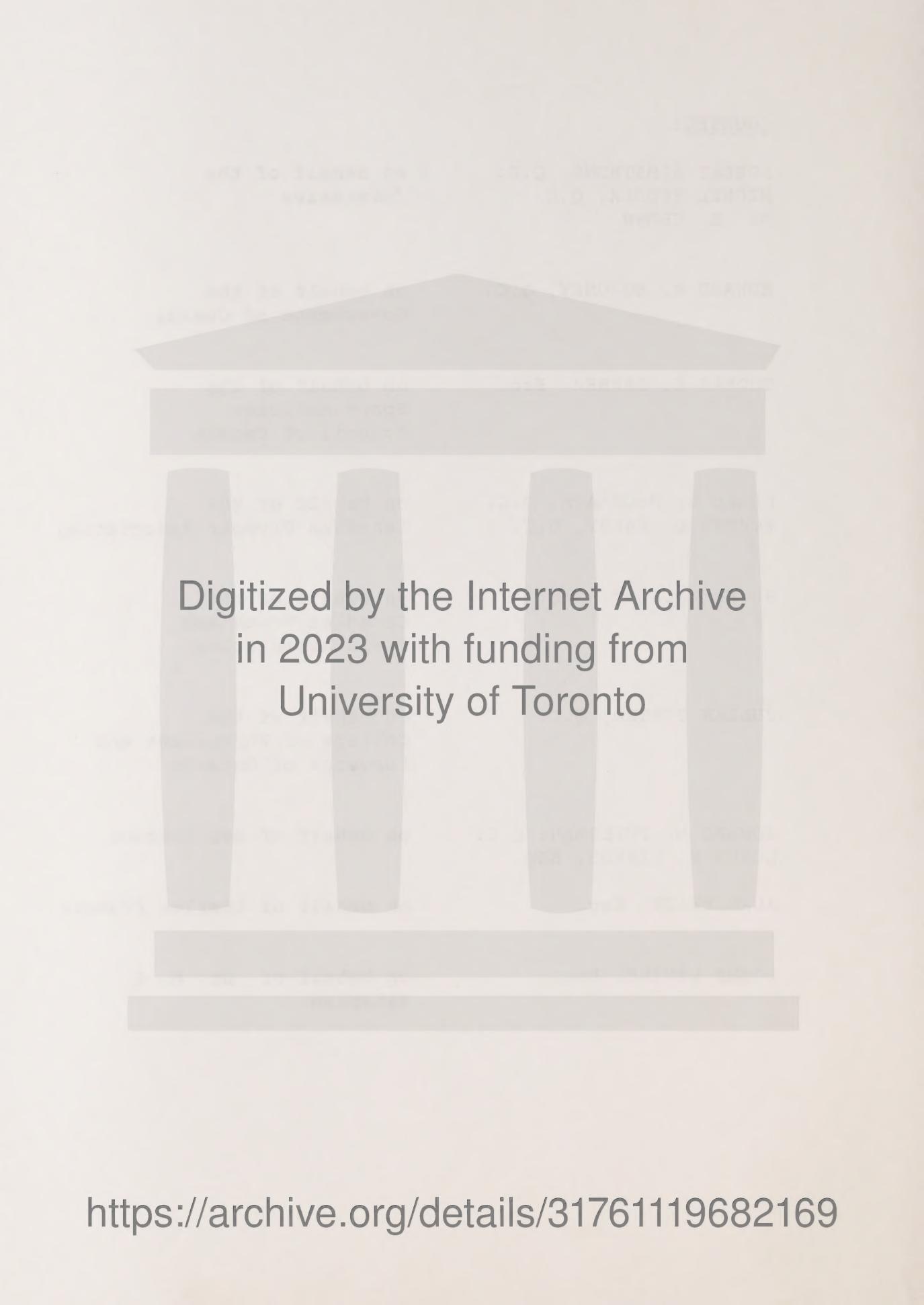
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---- Upon commencing at 10:00 a.m.

THE COMMISSIONER: Mr. Armstrong.

MR. ARMSTRONG: Yes, thank you, Mr.

5 Commissioner.

LYLE MAKOSKY, (Previously Sworn)

DIRECT EXAMINATION BY MR. ARMSTRONG:

10 Q. Mr. Makosky, just picking up where we were yesterday with Exhibit 17 and the exhibit that is --

THE COMMISSIONER: Excuse me, Mr. Armstrong.

Mr. McBey, I need a pad of paper. Okay. Fine. Thank you, very much. Sorry, go ahead.

15 MR. ARMSTRONG:

Q. That's fine.

The exhibit that is marked as Exhibit 17, as you will recall, is marked, Mr. Commissioner, is described as Doping in Sport, International Developments. And at 20 the end of the day yesterday you were reviewing, Mr. Makosky, where we currently stand internationally in regard to what the Council of Europe is doing; has done; what the Nordic nations have done and, are doing; and other international initiatives that have been taking place. And the conclusion that I take from that summary

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that you gave us at the end of the day yesterday and looking at Exhibit 17 is that there is indeed a recognition among nations east and west, that there is a very serious problem concerning the use of prohibited drugs by athletes around the world. And is that a fair conclusion for us to draw from your evidence at the end of the day yesterday?

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A. Yes, I think so, sir. And I would underscore that I think that common and consistent belief has really only reached that kind of uniformity and strength in the last two to three years.

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Q. All right. Thank you. Now, we were going to move ahead today to Canada's position in the initiatives that have been taken on the international scene. And you and your Ministers, Mr. Jelinek and Mr. Charest, have been involved in that and you have prepared another neat summary of what has transpired internationally from the point of view of Canada's involvement. And, Mr. Commissioner, that document follows immediately after the document that we had marked as Exhibit 18.

THE COMMISSIONER: IOC.

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MR. ARMSTRONG: The IOC Medical Commission Rules, as I called them. And that document is headed Doping in Sport, International Developments, the Canadian

Government's International Involvements in Anti-doping Initiatives in the 1980s. And I would ask that that document be marked as Exhibit 19.

THE REGISTRAR: 19, Mr. Commissioner.

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THE COMMISSIONER: Thank you.

--- EXHIBIT NO. 19: Document entitled "Doping in Sport, International Developments"

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MR. ARMSTRONG:

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Q. All right. Now, you started this document, Mr. Makosky, really in 1983 with making note of our own anti-doping policy, and can you just take us from there starting with the domestic scene, but again bearing in mind that Ms. Hoffman is going to deal with the domestic scene in some detail.

20

A. Yes, sir. Let me begin by saying, Mr. Commissioner, that in 1983 when Canada participated in the Pan American Games in Caracas, Venezuela, the results of those games in terms of the positive doping tests attributed both to Canada and other nations I think brought the Canadian government to a stronger and perhaps more dramatic realization that doping in sport in Canada was serious and that we as a Federal government had to play a significant role to address it.

25

We had to play that role, we believe, because we had certain social responsibilities and as a major investor in the social movement of sport we were unequivocally opposed to any form of cheating in sport.

5

It was our observation as well at that point in time that the sport community in Canada had failed to act as fully and as completely as we felt was appropriate to address the problem.

10 And as a result, we decided we had to move both domestically and a short period thereafter internationally.

15 And domestically, the Federal Government announced it's anti-doping policy and program. The policy was to state in effect that the Federal government was unequivocally opposed to doping in sport, and that we had a expectation that there would be a program including all national sport organizations to develop anti-doping policies and programs, and that that expectation said to each national sport body that in their submissions to the 20 Federal government in succeeding months and years we would expect there to be four basic elements contained in their program.

THE COMMISSIONER: Their submissions for funds, is that what your saying?

25

THE WITNESS: Correct.

And there are specific -- when we requested them to specifically submit a plan and a program to address the question of doping in sport. And that plan and program, which was to be funded by us as part of our overall funding, was to include, first of all, a policy statement against doping in sport, which they would communicate to their members throughout their sport system.

Secondly, a plan for engaging testing in anti-doping, the testing protocol and a series of scheduled tests.

Thirdly, an educational program to acquaint their athletes with the dangers and concerns, and indeed the changed policy and program line and controls that we were wishing to be instituted. And finally to engage as a sport body in international advocacy to their international federation in order that there be some change internationally.

So from the very beginning, Mr. Armstrong, in that opening policy, we felt that we had to move not only domestically but internationally, and we asked the sport bodies to address the problem within their sport in Canada, but also to begin to act at least in terms of arguing the case for change and improvement internationally through their international federation.

5

Q. Could I just interrupt you there for a moment before you move directly into the international scene, and Ms. Hoffman is going to deal with this as well, but I think it's important to also underscore it at this stage. It seems to me, at least, that in 1983 Fitness and Amateur Sport through Sport Canada was laying down an anti-doping policy which the national sport organizations in this country were required to adhere to. Now, do I understand that's, in effect, what was happening?

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A. Yes, sir, that's correct. The only other point I would make is that we clearly observed that there were some sports that we had more concern with than others. And hence, our approach to them was to indicate that we would be prioritizing, if you will, the sports into at least two categories and urging greater action by the first category sports.

20

Q. And again, that will be dealt with later, but then taking that position of Sport Canada, I take it also from what you have just said a few moments ago that in a sense this was a departure from what I might describe as the consultative approach of Fitness and Amateur Sport, and that indeed you were moving directly into the affairs, as it were, of the sport organizations in this country by requiring them to adhere to a particular policy?

25

A. That's correct.

Q. And that, again, I take it, from what you have said, is a recognition by Fitness and Amateur Sport and Sport Canada that, at least in your view, the national sporting organizations in this country simply had not done enough or for whatever reason perhaps didn't have the resources to do what was required to address this problem?

5

A. That's correct.

10

Q. All right. Now, would you move us along then following the outline that is set in Exhibit 19 into the international scene and Canada's participation there.

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A. When the Federal government, Mr. Commissioner, decided to move fairly strongly in the area of anti-doping and launched the domestic program, we also felt that the issue was clearly internationally enough that we also had to act on an international level. And as we looked around the world as to where there might be a forum within which the Federal government could find a place to initially engage some kind of advocacy in a contributing leadership, we came to see that the Council of Europe was indeed, probably, the most likely forum. It was a grouping of 21 western European nations of governments who at that point in time were the only grouping of nations that had announced any kind of common resolution and statement of intent to address the problem. And indeed by that point in time barely a year before -- a

5

year after that, in 1984, published and agreed to in their committee of ministers the European Council's anti-doping charter. So we felt that the Council of Europe was the forum that we wanted to begin to do our work internationally as we felt we had to act, first of all, with other governments.

10

So Canada requested to the Council of Europe to become an observer at the of Council of Europe's committee for the development of sport. In particular, the experts group on anti-doping. This was quite unusual. There had not been, to my knowledge, any other nation that had requested observer status from outside of Europe. And subsequently, after some consideration in which a Canadian delegate attended such meetings, it was believed to be in the best interests, I guess, of the fight internationally to indeed have Canada join that group as an observer, but as a participating observer.

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We do have a delegate that attends all meetings of the Council of Europe's experts group on anti-doping, participates fully and contributes to the meeting, although clearly is not a voting member.

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And at that point in time, as we began to involved in the Council of Europe and to deal through our bilateral agreements with other countries and to attempt to assess the state of the anti-doping fight

internationally, we came to some observations of what we might call the international agenda for improvement as we saw it at that point in time as a Federal government.

5 And I think I point to the five observations at this time. First of all, it was our sense that there was no real leadership internationally in any comprehensive way. There were regions, there were pockets. I have referred to some of them yesterday in the testimony, but at that point in time there was no coordinated singular comprehensive leadership in the anti-doping fight.

10 Secondly, there was clearly no consistent or uniform approach to this problem across countries, across sports, across international federation or even amongst 15 multi-sport games.

Thirdly, there was no fully working model for an agreement between governments and the sport community, there was no model to which we and others could draw upon by which one could take knowledge as to how governments in 20 the sport community could work in this problem.

The closest we could find was the Council of Europe because their experts group did call upon sport experts and involved them in Europe. And their charter from the Council of Europe clearly called upon some kind 25 of relationship between governments and the sport

community. And we were tremendously encouraged by that charter.

However, it was our feeling that the government's role in that charter was too tentative, that the governments role left, we believe, perhaps a little too much to the evolution of the anti-doping movement and to the evolution of the sport's communities addressing of it. And we felt there needed to be a stronger involvement by governments.

Fourthly, we noticed that there was tremendous mistrust between the west and east block nations and there was no effective bridge at that point in time to try to bring together concerns of those two groups of sporting nations, save the European Sports Conference, which was really, at that point, only beginning some of its work and the jury was out as to how effective that grouping might be. And that also only involved west and east Europe and not any of the Americas or Asia.

And finally, we observed there was clearly inadequate testing in terms of any out-of-competition testing and, in fact, even consistent in-competition testing in world championships in multi-sport games. And there was, what we felt to be, an inadequate reporting of what testing there was into a central body that regardless of how many tests were being performed within countries,

it was not clear that all of those tests were being reported to a central agency, and in certainly not all of the positive tests nor the dispensation of the results in terms of penalties of those positive tests.

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Q. I don't want to move you ahead or take you out of context, but it might be a good point to ask you here. I take it, we're still in the same situation today, that there is no universal reporting of positive tests for banned drugs?

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A. That's correct. There is now a requirement in the IOC laboratory protocol that all IOC laboratories are expected to report the results of all tests.

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THE COMMISSIONER: To who?

THE WITNESS: To the IOC's medical Commission.

However, it is not clear exactly what should be done about the reporting of all positive tests and what information goes with the reporting of those positive tests, nor is there an expectation to report to the IOC what is done about those positive tests in those countries.

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MR. ARMSTRONG:

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Q. Well, let me ask you this just so I understand it, suppose my colleague, Mr. Proulx, is in a swim meet in Montreal and it's an internationally sanctioned swim meet but it's not an IOC, obviously, swim meet and he's tested and he tests positive for one of the

banned substances, in the Montreal lab, which is an IOC accredited lab.

Now, is that lab under an obligation, in those circumstances, to report that positive test of Mr. 5 Proulx to the IOC Medical Commission?

A. The Montreal lab would be under an obligation to do two types of reporting in that situation.

One, within Canada, into the sport family itself, the national sport body, assuming that Mr. Proulx 10 was a Canadian swimmer.

And, subsequently, the national sport body would presumably be required to report to the International Federation. If that was an international meet being conducted in Canada, there is a probability, if you will, that there might very well be an International 15 Federation senior executive present and the step of reporting to the International Federation might be done simultaneously in Canada, or it could be done to the Swimming Federation that might report it internationally to its' Federation. So that's one reporting track. 20

The other reporting track which would not be as immediate because the most immediate one must be to the sport community involved, in the moment, in such a meet, the other reporting track would be to the IOC because that 25 would not be an IOC meet but simply to report on behalf

the lab that testing had been done and that there was a positive test.

5 However, at this point in time, it's my knowledge that there is not a clear requirement to report the details of the test, nor to report what happens as a result of the test.

10 In other words, the Montreal lab at the end of the year might say to the IOC, in its report, that the Montreal lab had completed 3,000 tests in Canada, six of which were positive, and that would generally be the only information provided.

Q. So, in my example, Mr. Proulx would not be identified?

A. That's correct.

15 Q. And in that example, obviously, then the IOC would not be in a position to take any particular action or levy, any particular sanction against him? It would be up his national sporting body or the International Federation?

20 A. That's correct. Although it's fair to say that the IOC would not have, at this point in time, a recourse to a penalty, anyways. Their only penalties and sanctions apply to athletes within games.

25 Q. I understand that, but presumably if he were a candidate for the Olympic team in 1992, in

Barcelona, then he might presumably have some sanction taken against him by the IOC if they knew?

A. He is more likely to have a sanction penalty applied to him if he's a Canadian swimmer by the 5 Canadian Olympic Association.

Because where a swimmer, a Canadian athlete, has tested positive, at any point in time, the Canadian Olympic Association has an anti-doping policy which is -- has a discretionary penalty in which they review each case 10 on its own merits and apply a penalty. The Canadian Association would likely review that case, some short months thereafter, and apply a penalty that could include exclusion from the 1992 Games, as you have indicated.

But, at this point in time, technically and strictly speaking, the IOC would not take any recourse because their penalties only apply to athletes testing positive in the Olympic Games and apply only to those Olympic Games and no period on either side of the Games.

Q. All right.

A. Well, Mr. Commissioner, having made the 20 observations, as the Canadian government did what we felt was the international agenda for improvement and having obtained observer status at the Council of Europe, we then undertook to make a presentation to what was then going to be the next meeting of ministers of sport from the Council 25

of Europe which was to be held in 1976 -- September of 1986 rather, I'm sorry, in Dublin, Ireland.

That request was agreed to and again, this was somewhat historic in that a minister of a sport from another country, outside of the Council of Europe, was invited to be a participating member of the meeting. In fact, sat at the table with the other ministers and to make a presentation on the Canadian Government's views in anti-doping in sport.

Q. Before you tell us what occurred in Dublin, it might be useful at this stage, Mr. Makosky, if I were to ask, Mr. Commissioner, if we could mark the Dublin speech of the Honourable Otto J. Jelinek, the Minister of State for Fitness and Amateur Sport as Exhibit 20 and it is in your book.

THE COMMISSIONER: Notes for a presentation, as the heading?

MR. ARMSTRONG: Yes.

THE COMMISSIONER: Right, notes for a presentation?

MR. ARMSTRONG: Yes, "Notes for a presentation - doping in sport. The need for an expanded campaign against the use of drugs in sport," given at the Council of Europe, Fifth Conference, in Dublin, September 30, 1986.

---- EXHIBIT NO. 20: Notes for a Presentation - The
Honourable Otto Jelinek

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THE COMMISSIONER: Thank you.

MR. ARMSTRONG:

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Q. Thank you. All right. I'm not going to invite you to read Mr. Jelinek's speech, but what was the position that he took at Dublin and what transpired as a result?

15

A. Perhaps, just before I indicate that, Mr. Armstrong, if I might, I think it's important at this point, and before we get too far into the content, to talk about, if I may, the Federal Government's underlying beliefs and assumptions that we used and have been working with, if you will, as we have, undertaking this international involvement.

20

Q. Yes, please do?

25

A. And there are a number of ways of constructing these and I would summarize them as follows -- I've noted five: It is our belief, as we have worked on this international involvement, that the issue is so international and cannot be solved by only addressing the problem within one's country, that in order

to have a complete solution we felt it was necessary to work both within Canada and without.

5 Secondly, it's our fundamental belief that governments have a role to play and are concerned about the issue domestically and internationally and we're concerned about the lack of action.

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Our concerns are clearly for the health of our citizens, Canadian citizens; they are athletes and citizens as well. We're concerned about the ethical conduct of the social movement of sport and this, we feel, is part of our social responsibility given to us under the Act.

15

Thirdly, we're concerned about the impact of anti-doping in sport on societal values as has been stated by many, including the Commissioner in opening comments. Sport is oftentimes a metaphor for others who use it as a way of understanding and working through life and it certainly has a strong impact on youth and we're concerned about the use of drugs in sport and what that says about societal values and the way we are as a Canadian population.

20

We're also concerned clearly about the investment of public monies which are considerable. We have a responsibility to understand where those monies go and to what end they are being put and whether it is a

25

wise investment on behalf of the Canadian public.

We're also concerned clearly about the potential of illicit or illegal activities. Some of these concerns clearly lie outside of Fitness and Amateur Sport and involve other departments and other areas but, as a government as a whole, clearly we're concerned about such activities.

What might we say then about the role of governments in this matter or, at least the role as we see it for the Canadian government, domestically and internationally, and we believe it to be a common role internationally, we believe that the Federal Government should be involved in providing financial support to the sport community to engage this anti-doping fight.

That the governments of the world and, of Canada, are generally responsible for some portion of the education of youth and that, therefore, we should have some responsibility for educating youth on the concerns of doping in sport, both from an ethical point of view and from a medical point of view.

Clearly our role is to develop and position appropriate legislation over time, as may be needed, to equip the government and the other members of the sport community to engage the fight.

Clearly the government should be concerned

with the control of trafficking of illegal substances, both within Canada and across borders, between Canada and the other nations.

5 The role of the government clearly should also be involved with government-to-government agreements on an international basis. It is through these agreements that we believe that there can be concerted and joint action internationally among governments.

10 And, finally, we believe that governments should use their financial contributions to apply financial pressure to induce more bodies to act in the appropriate way. So, we felt that governments have those concerns and those roles to play.

15 The third assumption that we've been operating under is that, notwithstanding the significant action the Canadian government has undertaken in the last three years and I think the interventionist role we have played that you have noted, Mr. Armstrong, nevertheless the Canadian government fundamentally prefers that the independent voluntary based sport community manage it's affairs in this issue. Particularly as we look at all those roles that are not included in the roles that I've just noted for the government.

25 We don't wish to give up the roles I've indicated but we do wish, on a long term, that the

independent sport community manage the balance of roles and this issue, both domestically and internationally.

But we're not prepared, as a government, to stand back if we feel that there is no suitable and appropriate action taken which is what the judgment we came to in 1983.

Thirdly, we believe that the, or fourthly, we believe that the International Olympic Committee represents the best option for international sport leadership in the sport community on this issue since the IOC has the keys to the ultimate club, that is the Olympic Games.

They also have the most connections with international federations and the most connections with countries in sport of the world since there are 160 National Olympic Committee members of the IOC.

So, for all kinds of reasons, both the keys to the club, the nature of its linkages and the work that had been done to date in the establishment of IOC labs, we felt that the IOC was the best option to engage international sport leadership.

And finally, the assumption we were working under is that the goal, the fundamental goal that we would undertake, that we would be about internationally, was to work toward a common, uniform and consistent approach

world-wide, what some have called an international level playing field and that Canada must work towards fair and equal competition for all the world's athletes in games and outside of games.

The first item from the very beginning that I will speak to in a moment with regard to Dublin, was a concept of a world charter.

In the middle of 1986, within the government system, in discussions amongst ourselves, and with the minister, we came to the conclusion that the idea of a world charter was to be, for us, the most significant next step.

We felt it could be a moral instrument. We
20 recognized that a charter is, by definition, not a
convention and, therefore, not obligatory; it is after all
voluntary. But, nevertheless, it could be a moral
instrument, if you will, to raise the agenda of this item
around the world and to raise the sense of moral trust and
25 ethical treatment of this question.

Secondly, we sought as an opportunity to define the role of governments and the sport community, since we had noted in our assumptions that the role of governments in sport community were significant, but ther
5 was no real known and understandable model by which governments in the sport community could sit down together and negotiate their separate and joint roles. We saw the charter as fulfilling that potential.

We also sought as a prescriptive element,
10 that the charter could provide guidelines, if you will, as to what activities should be undertaken by countries throughout the world.

So it was a prescription of guidelines and procedures and, fundamentally, given our main objective,
15 we saw it as a basis for a world-wide common approach. Clearly, it would not solve the problem. Clearly, it would not be the answer. But it was a basis for a common approach upon which we could build other actions.

The second part of our agenda for action was to somehow, and we weren't quite sure when we started how we would do this, to try to catalyze an international forum of some kind of governments in the sport community to come together to explore change and improvement.

This ultimately became a world conference.
25 In the initial sense, we had no specific knowledge exactly

of where that would take us but we wanted, if you will, to create some kind of international forum that we felt did not exist at that point in time.

We wanted that forum to engage leaders at the policy level. We felt there was enough activity, if you will, at the research and technical level within the IOC Medical Commission and the laboratory personnel but we felt there should be more discussion at the policy level of leaders both in sport and government.

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Our third agenda was to, if you will, both support and encourage and, in the strongest terms we could muster, the IOC leadership, and this has been part of, I think, our endeavour from the beginning.

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From the very first period when I arrived as Assistant Deputy Minister in June of 1986 and we embarked upon some of the initiatives, such as the charter, I had several conversations with the IOC Vice President Richard Pound, who was then and is now a member of the Executive Board of the IOC and a vice president, seeking his advice and counsel on the relationship with the IOC, his sense of the ability of the IOC to take leadership, and how we might in fact engage further action.

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We also had many discussions throughout the piece with other agencies, such as the Council of Europe, the United States Olympic Committee and, indeed, even Manfred Ewald, the head of the German Sports Federation, and the GDR about the involvement of the IOC.

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So our agenda was always on the table, that we were backing the IOC, if you will, and we wanted them to move ahead stronger and stronger as much as was possible.

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And as you will see, as we subsequently undertook various actions throughout the last three years we have continually, I think, attempted to involve the IOC

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with the various initiatives, and indeed to, as much as possible, transfer the ownership to them based upon the assumption that the substantive part of this problem should ultimately be managed by the sport community under 5 the guidance internationally of the IOC.

The fourth agenda for action was to focus on a better testing system and a better reporting system, and that became part of our agenda as well.

Our fifth agenda for action was to use the 10 government to government channels that we had to underscore the role and action by governments. As I have said we had some assumptions about what we thought were the concerns and rolls of government, we felt those were not as fully as could be possible embraced and utilized 15 and agreed to by the governments of the world, and it was our intention to use our government to government channels to encourage that agenda both on a bilateral basis and to seek other multilateral government forums that might be available.

20 And finally, our agenda for action was that Canada, we felt, had in general terms a substantial reputation internationally as a nation that was considered to be one that had integrity, that was considered to be one that could be a broker, a go between between different interests, between different view points and social 25

systems, between the west and the east, and, indeed, that kind of posture of Canada as a nation was no less true in the international sport community, and that the work we had done both as an athlete nation and in managing games and in contributing to other items on the international agenda had established Canada, I think, as a vital member of the international sport community and one that could have its actions undertaken with integrity and, indeed, could provide a kind of broker role.

We also saw the opportunity to provide, if
you will, a link between the North American continent and
Europe, because of the fact that our observations and
discussions with the Council of Europe was that the
Council of Europe had huge questions about what North
America was doing, did not have adequate knowledge and,
indeed, there was significant, I think, mistrust about

North America and in particular about the United States.

And both parties, ironically, I think, felt
that there was some need to come together, but no
initiatives had been taken to form that kind of link, and
we felt we might in all humility provide that on an
informal level.

Q. If I could just interrupt you there.

I take it this mistrust of which you speak
goes both ways. To put it bluntly, the Americans mistrust
some of the eastern block countries and believe that they
have a managed program of drug use, and the other side of
the coin is that some of the eastern block nations have
almost the identical view of the US, is that so?

A. Yes, they might. Those different
perspectives might describe the other side's problems a
little differently, but they would certainly be, I think,
based upon a considerable mistrust in pointing the fingers
in the other direction. I think that's a fair statement.

Q. Thank you.

A. So, this brings us to the Dublin
meeting. We were operating with the assumptions that I
have outlined. We were operating with this agenda for
action. This was our first opportunity to beginning to
influence that agenda for action. And Canada, just before
attending Dublin, undertook two important discussions.

5

One was that I had discussions with the President of the United States Olympic Committee in which we indicated what our intentions were in Dublin and asked whether in fact there would be an interest through that forum in providing a link or a bridge, if you will, between the United States and at least in Western Europe to initiate some talks and discussions on a common fight.

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The United States Olympic Committee President indicated enthusiastically, both in discussions with myself and subsequently with the minister, that he was prepared to have that point of view advanced and that became the basis for part of the discussion and part of the talks that were held in Dublin.

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Secondly, just before the Dublin meeting, we attended a meeting in the GDR with senior sport officials including the President of the Deutscher Turn und Sport Bund, a Mr. Manfred Ewald in which we also sought his interest and potential involvement in a common international fight based in part on a world charter.

20

I can say that he was clearly interested in a common international fight and was reserving judgment on whether or not an international charter would be the best next step, but was prepared to be open and considerate when the idea came forward.

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So, equipped with both of those discussions

we went to Dublin and the minister presented the talk that is attached as the Exhibit Number 20, and I think that the talk really established at that point in time two or three main points. One the idea --

5 Q. Could I just interrupt you here for a moment just so that we have it before you get into the Dublin speech. Who was the president of the international -- or the United States Olympic Committee at the time?

10 A. His name is Robert Helmick. He still is the president.

Q. All right, fine.

I'm sorry I interrupted you, just go ahead, please, with the Dublin speech?

15 A. The Dublin speech said many things, but I think we can boil it down to three.

One, it called for a stronger government role and more government to government work and agreements along the lines that we -- that I pointed out in testimony 20 a few moments ago.

Secondly, it called for stronger IOC leadership working in conjunction with the international federation and, thirdly, it called for the creation of a world charter, based in part to give full credit, I think -- based in part upon the good work that had been

done to that point by the Council of Europe's own committee and the creation and approval of their own anti-doping charter.

That set of proposals was, I think, received 5 warmly, and as a result there was a resolution tabled in the final days of the Council of Europe meeting in which they approved, if you will, Canada's request for this initiative and called upon the Council of Europe's doping committee in all countries to work together with Canada and to move ahead to create a worldwide anti-doping 10 charter.

THE COMMISSIONER: And is that what is annexed? Would that be the resolution. Were these Canada's proposals and were they adopted?

15 THE WITNESS: Yes, sir, those were part of the speech. Not all of those proposals were completely adopted because a number of them, I think, called upon actions that perhaps the Council of Europe itself wanted to study further. But they received the complete report 20 and the actions dealing with the charter were accepted. They were rephrased, and perhaps it would be appropriate, Mr. Armstrong, for us to provide you with the full resolution as tabled at the Council of Europe in addition to this speech, because it expressed exactly what was 25 passed. I think you may have it, perhaps not readily

handy.

Q. I don't think we have it.

A. Okay. We will undertake to provide
that.

5 Q. It is not readily handy, but if we can
get it either at the break or at some other point it
would, I think, be useful to mark it as an exhibit?

A. All right.

Q. Fine. Go ahead, please.

10 A. At that point in time, a head of
charter design group was struck.

THE COMMISSIONER: At this stage none of the
east block countries are involved?

15 THE WITNESS: At this point in time there
were no east block countries, that is correct.

As you have noted, sir, and as is indicated
in the top of page 2 of the document that is exhibit
number 19, within days, basically, a charter group to work
on the drafting of a charter, an informal group was
immediately struck composed of Canada through officials of
Fitness and Amateur Sport, as well the representative of
the INRS Laboratory, Dr. Robert Dugal. It was composed of
a representative of the Council of Europe, who was then
and is now the secretary of the Council of Europe's sport
division, Mr. George Walker. It was composed of a

representative of the International Olympic Committee in
the form of the then second Vice President of the
Executive, and head of the IOC Medical Commission, Prince
de Merode, and it was composed of the United States
5 Olympic Committee, what came to be two representatives at
that point in time, Dr. Don Catlin, who heads up the IOC
Laboratory in Los Angeles, and Dr. Robert Voy, who is the
senior staff member of the USOC in Colorado Springs, and
heads up the anti-doping committee -- well, not committee,
10 anti-doping staff group, I guess, that works within the
USOC on the programme of anti-doping.

So that was struck as the charter group, and
this group immediately determined, I think, that the
charter should be a joint project between governments and
15 the sport community, and that in fact both should work
together to create this charter. This group ---

Q. Can I just interrupt you for a moment,
just again to get all the players in place here. I take
it that on this working group you are the Canadian fitness
20 and amateur sport representative, are you?

A. Yes, sir, we had three representatives
on it actually. Myself, Abby Hoffman and Mr. Ole
Sorensen ---

Q. Right.

25 A. -- who is our senior staff member that

heads up and manages the Federal Government's anti-doping policy and program. All three have been members throughout.

5 Q. And then, from the INRS laboratory in

Montreal we have Dr. Robert --

A. Robert Dugal.

Q. And was there anybody else ---

A. No.

Q. -- in the Canadian group?

10 A. No, that was the contingent.

Q. I know that Dr. Dugal, today, is a member of the Medical Commission of the International Olympic Committee. Was he at that time?

A. That's correct.

15 Q. All right. Now, what about Dr. Catlin, was he, back in 1986, also a member of the IOC Medical Commission?

A. He was not and is not currently.

Q. All right. Fine. Go ahead, please?

20 A. This group, or parts there of, because travel and logistics for this group, which covered two continents, was difficult over the periods, so either parts or the full group met on several occasions. I have noted them there. The first meeting was in July, on July 1st, 1987 in Ottawa where we hosted the group in Canada,

then in August 9th in Indianapolis at the Pan American Games, 1987?

October 14th, '87, Colorado Springs, where there was an international meeting of the general assembly of the International Sport Federations, and then November 12th '87, Strasberg at the time of the Council of Europe's annual meeting of it's experts committee on anti-doping.

We use those occasions to either, as a whole or in part, bring the group together to do further work on the development of the charter.

I would say that in general over this period up until the Calgary Olympics that we were, I think, moving ahead, not as fast as we would like, would have liked, and I think that we were still feeling that the desire for a common approach internationally and leadership by the IOC had not yet been seized as strongly as we would like, even if you will fully by all members of the group.

There was still a sense of tentativeness, there was a concern about whether governments here were doing the right thing. There was a concern about how the east block would view this group and the creation of the charter, and so we were dealing with all these concerns.

Nevertheless, we were making progress in drafting the charter, all of those questions were still

hanging in the air. I mention them because I think there was a fairly dramatic change in those considerations in and around the period of the Calgary Olympics, and I will allude to that in a moment.

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So, based upon these still remaining questions that we were dealing with, the next, I think, important incident occurred in the fall of 1987.

Q. Just before you take us there, I just have one more question of detail as it were.

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Do I understand from what you are telling us that in this working group that is established with Canada, the Council of Europe, the IOC, the United States Olympic Committee, that your group from Canada are really performing the role as chairpersons of this committee or providing a secretariate to the committee, however one describes it?

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A. Yes, I think certainly the secretariate. I would say we were in a sense calling the pace, keeping the meetings moving along. There was a kind of informal co-chair going on because we always wanted to have the IOC at the table as I mentioned. So generally, it tended to be a kind of co-chairing between Prince de Merode and myself. It was rather informal, we didn't vote on things.

20

Q. Well, to use the sports metaphor that you alluded to earlier, it was a two quarterback system

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then. You and Prince de Merode were quarterbacking the working group?

A. I think that's fair, yes.

Q. All right.

5 A. In 1987 the socialists nations sport ministers met, and subsequently produced a statement which they called an appeal, which they took to a meeting held in Greece of the European Sports Conference.

You may recall from yesterday's testimony, 10 Mr. Commissioner, that the European Sports Conference is a grouping of west and east European nations who come together to talk about various issues. They were having a conference in Greece primarily on the question of doping, and at the end of those two or three days and literally 15 just before the press conference to announce the findings of that meeting, there was a presentation by the socialist ministers of sport of this appeal statement which came into the press conference at that moment.

This was, I think, in some ways, one of the 20 catalysts, I think, to what we considered to be a change in pace and mood that we experienced in the Calgary period.

We felt that this was an indication that the 25 Socialist Ministers were saying, in their statement, that they felt that the world wide fight in anti-doping needed

to be increased, and, indeed, there needed to be found a more common approach and that countries needed to work together in a more stronger fashion. And they also called upon the IOC to work with the international federations to take a stronger leadership role.

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Q. I take it that this statement just happened to coincide with the initiatives, that you were in the process of quarterbacking. You were not aware that this was a statement that was likely to be made or that there was anything afoot?

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A. That's correct. We were pleasantly surprised, as they say.

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Q. All right. Again, let me just pause to get, as it were, the key players. I am not sure that you told us yesterday exactly who it is that makes up the group of nations that you describe as the socialist nations. I take it they tend to be eastern block, do they?

A. That's correct.

20

I can't give you a complete and detailed list, but it would include the GDR, the Soviet Union, Bulgaria, Romania, Czechoslovakia, Poland, etcetera.

Q. All right, okay. All right.

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So, here we are then in the fall of 1987, just a little over a year ago. You have got your working

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committee going that was struck after Dublin, and your meeting in the summer and fall of 1987, and then coincident with that along comes the socialist nations sport ministers that, I guess, are really saying some of the same things that Canada has been saying and urging?

A. That's correct.

Q. So, what do you do as a result of that?

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A. Well, at that point we knew we were entering into the Calgary Olympics. Canada would be host to a considerable number of nations of the world, and we saw it as an opportunity to utilize the fact there would be many countries whose sport ministers would be here to have a discussion about next steps including the charters.

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It is at this point the work of this international charter group was not widely known, I think by choice, because we were concerned about how soon and in what form we should announce this, and, particularly, we were sensitive to the potential considerations of the eastern block nations. So we saw the Calgary games as an opportunity to perhaps address some of these questions with other countries.

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When this Socialist Ministers' appeal statement was released, we waited for a couple of months to see what others would do about it, and to our knowledge we were somewhat surprised that there was no reaction, if

you will, from other countries in the western field, and
we, again, wanted to demonstrate that Canada and other
countries were concerned about this and wanted to use
their appeal statement to form a bridge between the west
5 and east that we felt did not exist as fully as we would
have liked. And as a result, we extended an invitation
both directly in some cases, because we have bilateral
agreement contacts and other cases through the embassies
in Ottawa to invite the ministers of sport of the
10 socialist countries who were going to be in Calgary, which
would have a relatively smaller number, but still the top
sporting nations from the Socialist block, about 7 or 8,
to a private informal meeting to in fact discuss the
appeal statement and what it seemed to signal, what it
meant, and what the socialist countries expected to happen
15 as a result of this statement.

Indeed, that was specified as the agenda
item and we engaged, if you will, or held a meeting in
Calgary on February 17th with the then Canadian Minister
20 Mr. Jelinek and seven Ministers of Sports from eastern
block countries in which we, basically, began the meeting
by indicating that we had read, with tremendous interest,
the appeal statement, felt it was significant and weren't
exactly sure what the Socialist Ministers expected should
happen next or, indeed, how we should respond to it.
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THE COMMISSIONER: May I interrupt?

You call this an "appeal statement". I am puzzled by the word you use. What does it mean, "appeal statement"?

5 THE DEPONENT: Mr. Commissioner, I am using the word because that's what the Socialist Ministers actually called it.

THE COMMISSIONER: What does it mean?

10 THE DEPONENT: My interpretation is that they were ---

THE COMMISSIONER: A policy statement of some sort?

THE DEPONENT: No. I think it was a call to other nations to engage in discussion.

15 THE COMMISSIONER: I see. All right.

THE DEPONENT: There was an appeal, let's talk, let's act, if you will.

THE COMMISSIONER: Thank you.

20 THE DEPONENT: At least this is our interpretation.

MR. ARMSTRONG:

Q. Could I just interrupt you further.

I take it that the meeting that you are about to describe, you were in attendance at that?

25 A. That's correct.

Q. And Mr. Jelinek -- who else from Canada was present? Just you and Mr. Jelinek?

A. Abby Hoffman was present as well.

Q. All right. Now, you mentioned the six or seven major sporting nations from the socialist nations. Again, who would those be? Same group that you have just mentioned moments ago?

A. My memory was the Soviet Union, GDR, Bulgaria, Czechoslovakia, Hungry,

10 Q. Poland?

A. I can't remember. I think Poland was the 6th, I would like to check that.

Q. And what about Romania, did you mention Romania?

15 A. I don't think Romania was present.

Q. All right.

A. But I am not sure about that 6th one, because there was so many changes in the final days on which countries could make it and could not.

20 Q. In any event, you have clearly -- you have got the group that you have mentioned probably, possibly with a question mark concerning Poland, but clearly the USSR, the Soviet Union and East Germany, their sport ministers were there?

25 A. That was key.

Q. Yes. Okay.

A. In that discussion, when we began to talk about the appeal statement by the socialist ministers, it quickly moved from the discussion of the appeal to a general consideration of what the various sporting nations were going to do about the problem. And in summary, after some two to three hours of discussion, the talk increasingly moved towards some kind of gathering of policy leaders. It was felt at that point that it would probably be more appropriate to have a gathering of policy leaders, not the ministerial level, but at the senior working level so that there could be a mix of both governments and the sport community. There was a sense there that we wanted to involve both, and that, indeed, as the discussion went on it went from a general policy meeting to some kind of conference, a working conference that would actually undertake some good discussions and produce some good results. And at one point in the discussion it was suggested by one of the other nations that perhaps Canada, as the host nation in Calgary, that it had convened the meeting and was known to have begun some work internationally and was considered to be a country that would, if you will, be seen as a fairly honest broker of the question. Perhaps Canada can consider hosting such a conference. We at that point

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agreed that we would be prepared to do that, and by the end of the conversation there was agreement that Canada should consider holding a world level conference of policy leaders from government in the sport community on the question of anti-doping.

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When we looked at the timetable it was also considered that it was fundamental that the IOC be involved in that conference in a vital way. In fact, they should agree to it and ideally they should be a strong position in it, which we shared completely. In fact, we had suggested that the IOC in Canada should perhaps properly co-chair it, rather than Canada alone.

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Q. Was that a topic of discussion at your meeting with Mr. Jelinek and the Socialist sporting ministers?

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A. Yes, it was.

Q. And did the eastern block countries accept the concept of the importance of the leadership of the IOC?

A. Absolutely.

Q. All right.

A. In fact, pushed it very strongly.

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We also, in looking at the timetable, noted that the Seoul Olympics were arriving in September and felt that it would be, if possible, desirable to hold such

a conference to produce some action steps and recommendations that could in fact go before the IOC meetings in Seoul. And at that point in time, the Soviet Minister, Marot Granov, noted that in December of the same year, in Moscow, the Soviet Union would be hosting the UNESCO meeting of ministers, and that he would be prepared to entertain the tabling of major results from such a conversation before the UNESCO Ministers if the results were substantive and contributory.

So we already had, at that point in time, sort of two time goals to try to reach. We also realized that time was very short. We were now speaking about virtually the end of February and noted that the games were in Seoul in September, the -- and that we would therefore probably have to have the conference in the summer. We concluded the meeting, I think, with a sense that that would be the most important and viable next step. Minister Jelinek, during the discussions, tabled the idea of a world charter, and that in fact it could become part of the agenda of that conference, and the rest of the delegates agreed that this should be one of the agenda items, that it was in fact a good idea.

The very next day we met. Minister Jelinek and myself met with Prince de Merode in a private session and presented to him the results of the meeting and asked

for his reaction. His reaction was enthusiastic and he immediately welcomed the idea of it, and in fact the idea of Canada hosting and the IOC in Canada co-chairing was a good one. And in discussions we talked about making the conference a permanent fixture, and therefore agreed that we would actually put in the title that it would be called a Permanent World Conference on Anti-doping, which is now the official title.

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He agreed that he would take the suggestion immediately to the IOC president to gain his concurrence, and we jointly worked out the details of the meeting of officials to be held several days later to work on the general draft elements of such a conference and to gain the concurrence of several other nations before we would announce it during the period of the Calgary Olympics.

I should say, by way of comment as well, that at the beginning of the games, in the opening days just before the games I had a couple of occasions to have lunch with and talk to Prince de Merode on the progress of our charter group and the general advancement of the cause internationally. And I would say that he was considerably motivated by the socialist minister's appeal. And also, I would say that there appeared to be a signal at that point in time from Prince de Merode that the IOC was changing, if you will, its sense of leadership in this

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issue, and was prepared to assume a stronger role. Up until that point during the previous year I think we experienced some tentativeness, understandably, by the IOC, because they had not taken a strong interventionist role outside of the Olympic games and outside of the presentation of a list and the laboratory -- and the accredited laboratories, and the matter of leadership, bringing together a common approach amongst the sport community internationally, I think, had been looked at with some concern and tentativeness in the discussions that I had with Prince de Merode in the opening days. I detected, in my expression, a change in that general sense, and that the Prince expressed that the IOC was prepared to explore a stronger role for the IOC.

Taking that knowledge into mind and the knowledge that what transpired a few days later with the ministers, we felt that, indeed, there would be a good reaction from Prince de Merode, and that, indeed, was what happened when we discussed the concept of the conference with him.

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And a couple of days or a day later we were informed that the President Samaranch was very enthusiastic about what occurred, that indeed we should proceed with their support and involvement. And about three or four days later we had a working group of

representatives from, at that point in time, the GDR, the Soviet Union. We invited in a delegate from the United States Olympic Committee, from the United Kingdom, and ---

Q. Who was there from the United States
5 Olympic Committee; do you recall?

A. Yes, Dr. Robert Voy was present.

Q. Yes.

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A. From the United Kingdom, Mr. John Scott, from the British Sports Council. And from Norway, the President of the Norwegian Sports Federation, and a leader in this fight internationally, Mr. Hans Skaset. He had a medical representative from his medical staff there with him, whose name I can't remember, but did not contribute to the discussion.

Q. Is it Dr. Skaset or Mr. Skaset?

A. Mister.

10 Q. Mr. Skaset is from the Norwegian Sports Federation?

A. That's correct, he is President.

Q. Is it also related in some way to the Norwegian Olympic Association?

15 A. Yes. I may be wrong structurally about this, but I believe that the National Olympic Committee is a committee of or a sub-set of the Norwegian Sports Federation.

Q. All right, fine.

20 A. So, they have a close working relationship. And clearly the Norwegian Sports Federation is the key agency in Norway that manages and runs and sets policy and runs the program, if you will, for anti-doping in that country.

25 Q. All right. Just, I am not sure that I

have it, perhaps everybody else does, but just so that I do, this working group then is Canada, the USSR, East Germany, Dr. Voy from the US, Mr. Scott from Britain, Mr. Skaset from Norway?

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A. That's right. And Prince de Merode and myself.

Q. Prince de Merode.

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A. So, in this working group meeting which went on several hours, we began by tabling the idea of the conference and what had transpired in the previous two days and put the question as to whether those countries would be interested in pursuing this conference and if they would assist in working out the framework, if you will, the initial terms of reference of this world conference. And the members around the table, I would say generally all enthusiastically agreed, and we proceeded to work out the terms of reference.

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Broadly speaking, the terms of reference were that the conference should be co-chaired by Canada and the IOC, and hosted by Canada. That the conference should involve senior policy leaders from the, what is often called, the voluntary sport community internationally. That it should also involve senior government people at the either policy or program level dealing with sport or drugs in sport. And that it should

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involve a cross-section of countries from the various continents of the world. In particular, drawing upon the leading sport nations. And that in fact we decided to keep the conference at a realizable size rather than inviting all 116 nations that were members of the IOC, we concluded after looking at the countries we felt should be there, and after looking at the continents that should be represented, we ended with a list of 28 - at that point I think it was 26 - which we later added two nations. It came to 28 nations.

The terms of reference at that point also included a rough agenda, a general agenda. One item of which was -- well, the agenda generally speaking was to establish a set of principles that all would agree upon to underlie the fight against doping internationally. A second agenda item was to attempt to draft and conclude a model for a world charter. A third agenda item was to deal with the question of co-ordination between the IOC and among the international sport community agencies, I guess. That was the rough agenda at that point in time.

And we left that meeting with an agreement that we would proceed. We noted at that point that with a holiday period of July and August which also appeared to be a strong holiday period in Europe, that we were forced to conclude that we could hold the conference no later

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than the end of June. And so at that point, we had four months, this being the end of February, to pull together to -- to announce, pull together and convene and manage a world conference on an important item, bringing together policy leaders in government and sport that had never come together on this issue in a time when there was I think considerable mistrust and a lack of knowledge of exactly how everyone should proceed and exactly who was doing what.

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So the challenge was not inconsiderable. However we had the key nations I think at the table agreeing to advance the cause further.

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So we began to plan this conference and we decided to use the informal working group that we had been working on the charter as a group to prepare a draft charter for the conference. We also utilized the representatives from the GDR and the Soviet Union who attended the working meeting in Calgary as a kind of advisory group to assist us with the planning of the conference.

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We asked them if they would agree to provide advice on the design and react to plans of which they did plan to do.

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It was then clear that in order to, if you will, quickly get a number of key nations on side and to

get the word out and to get some further advice, we needed to attend to in a personal way some important connections in Europe. We wanted to have immediate discussions with the Council of Europe which were not present in Calgary.

5 We wanted to have discussions with the European Sports Conference because that was the only forum that combined west and eastern block European nations. And we wanted to have discussions with Prince de Morode on progress and design once we had fine tuned it. And finally it was our
10 feeling that coming out of Calgary that the GDR was still tentative on the usefulness of the concept of a world conference and we wanted to meet with them face to face to discuss its viability and benefit.

15 Q. Just stopping you there. I take it from what you said at the end of the day yesterday, that the Soviet Union was not tentative in respect of this initiative that you were taking --

A. That's correct.

20 Q. -- to plan this world conference and work towards a world charter?

A. At that point in time, that's true.

That's correct.

25 Q. However up to the point in time we are at in your evidence this morning, that is post-Calgary games, the East Germans, are, you would call them

tentative, would it be too strong a word to say skeptical as to what might come out of all of this?

A. Yes, I think that's fair to say. Our discussions and I think Manfred Evold has stated this in other occasions, in other forums. His statement has been the belief that basically doping as a problem should be solved within countries first, that if every country attends to the problem in their own backyard that we will indeed not have a problem. That's a limited description of his point of view, but I think that would be the core essence of it. I think our belief has been that while we agree in principle it has to start there that waiting for all the countries of the world to evolve into some common approach and harmonizing the approach internationally we do not believe could happen on evolutionary basis. There needed to be some co-ordinated action internationally. And hence a conference and a charter provided at least an opportunity to do that.

So his tentativeness was not being convinced that we should move internationally in a co-ordinated fashion, but that in fact the clean up should be done in each country first.

And as a result that became agenda item we felt we had to address in private discussions with him face to face.

Q. And I don't know whether this issue would have come up because you are almost moving in a diplomatic world here, as it were, but would there have been any discussion between your group and the East Germans as to for example what is the extent of the doping problem in East Germany?

5 A. Yes.

Q. And discussions about what they have or haven't done to clean up the problem?

10 A. Yes.

Q. What were you told?

A. Generally speaking, I think the GDR statements would reflect that some recognition that from time to time they did have -- well, let me back up a second. The GDR had addressed the problem by putting in place an anti-doping control program. They had an extremely competent lab in Kreisha. Dr. Clausnitzer, who is the head of that lab, is recognized as a very competent technical expert, and it is an IOC accredited lab. So they had a laboratory, they were following the IOC protocol for the testing of, taking of samples and testing. They, in fact, were engaging in quite a significant number of tests. I believe the number quoted to us was bordering on 10,000 tests on an annual basis.

20 And that in fact there were occasions where they had

positive tests. And those individuals were then dealt with.

Q. Have they ever disclosed or do they disclose who tests positively, and for what substances?

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A. Not to us. I don't have any knowledge. I don't believe it's been disclosed to any other agency that I know of.

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Q. And in Canada, for example, my understanding is and we will get into it when Ms. Hoffman is on the stand, the information about the number of tests we do, and the number of positive tests that result and for what substances is readily available?

A. That's correct.

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Q. And what about in the Soviet Union. Is that kind of information available from the Soviets?

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A. In my and our discussions with them we haven't asked that question. So, I am not sure I know the answer. Again, generally speaking, internationally there is no requirement and we are not aware of a process by which countries report positive tests internationally to a central authority. Most, within most countries there is an obligation that the national sport body report a positive test to its international federation because only then can the international federation apply a sanction to the individual. But there is no requirement to report all

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those tests to any single central authority and the IOC does not collect those records from the international federations.

5 Q. I understand that, but in Canada, for example, it's on public record as it were as to how many tests we do, how many positive tests there are and for what substances?

A. That's correct.

10 Q. And I am just wondering whether among the eastern block nations it's on the public record there and then available to us to know how many tests in fact they do and how many positive tests have emanated over a period of years?

15 A. It would not appear to be readily available. I would have to say that we have not pursued that question diligently and specifically with all eastern block nations. The one we did have discussions with was the GDR. It would be my general impression that it is not readily available.

20 Q. I am sorry, I again interrupted you. .

THE COMMISSIONER: May I interrupt for a moment. Was the extent of the problem discussed? You are going into a very elaborate procedure, you have got the major countries of the world involved and one would think you wouldn't do all that unless everybody recognized it was

a very serious problem, not isolated?

THE WITNESS: Yes, Mr. Commissioner, I think that's fair. It was -- when I say the -- when you say the extent of the problem, there was no a lot of discussion 5 about the extent of the problem in any given nation. I think there was an acceptance that the problem was now world wide, it was not the domestic, it was an international problem. It was not contained to both or to only either the west or eastern block, that it was now 10 present in the major sporting nations in the world from both the west and the east. And indeed something had to be done about it.

THE COMMISSIONER: But it must be more than say one or two athletes a year, otherwise you wouldn't go 15 through all this process?

THE WITNESS: Yes.

THE COMMISSIONER: I wouldn't think.

THE WITNESS: I am not sure of my numbers, but I know that the IOC in the last couple of years have received the results of the 22 IOC lab tests throughout 20 the world. And that if I am not mistaken, the number of positives reported are somewhere in the neighborhood of think around three percent. And I can't remember if three percent of the total number of tests, I think it's under 25 arranged 30,000, or so.

THE COMMISSIONER: That's outside the Olympic competition?

THE WITNESS: That's correct, by all IOC labs. So, it would be three percent of 30,000 it would be reported by the labs as having tested positive. What other positive tests may be being obtained or observed in during that period is an unknown. But I think generally speaking, when we gathered around these tables, people would recognize that the problem was very serious, was quite serious in several sports and very serious in a few sports.

MR. ARMSTRONG:

Q. Let me, just picking up the thrust of The Commissioner's questions, I take it the Soviet Union and the German Democratic Republic, and the socialist nations are not going to spend a lot of time, money, and effort in to this initiative that you are taking if they don't believe that this is a serious problem both west and east. That is a fair way of putting it?

A. I think that's a fair way of putting it, sir.

Q. And indeed I think you agreed with me when I put a similar proposition to you first thing this morning?

A. Yes.

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Q. All right. Now just going back to the level of the particular for a moment in response to The Commissioner's question about the number of tests that have been reported recently to the, or number of positive results that have been reported recently to the International Olympic Committee and coming up around three percent, I assume, perhaps wrongly, but from the little I know, and I recognize that a little knowledge is a dangerous thing, but I assume that almost all of those positive tests would be tests taken in the circumstances of competition?

A. Virtually, if not all, would be in competition.

15

Q. I mean it's going to be 99.9 percent?

A. Yes. It may not be quite that high, but awfully high. There would be some countries like Norway and so on that do have a larger out-of-competition testing program. So, there might be a few in that realm, but the bulk.

20

25

Q. And again, I am going, when we get to your charter and so on, although again you may not necessarily be the definitive witness on the subject, I am going to ask you something about testing, but in-competition testing, let's just understand it right now, in virtually all cases, when there is in-competition testing, the

athletes know that it is going to take place?

A. That's correct.

Q. And without being cynical about it,
5 forewarned is forearmed, and one of the problems that you
and others are who are concerned about this have to
address is that in-competition testing itself just can't
do the job so far as testing is concerned because the
athletes in some instances if not many know what to do to
avoid positive results, those who are inclined to use
10 drugs?

A. I think that's a fair description, yes.

Q. And indeed your information, I suggest to
you, would lead you to the conclusion that many of these
athletes, east, west, wherever they are, know right down
15 almost to the final minute when it is that they have to
stop using a particular substance in order that their
systems be clear of it prior to performing in some
athletic event?

A. I think your last statement is a level of
20 medical specificity that I would be uncomfortable agreeing
with. I think that your general statement that the
forewarning allows athletes to, if you will, those that
are taking banned substances to manage their -- the use of
those substances so that there is little or no likelihood
of being caught positive. But the specificity of the
25

timing, the exactness of it, is a matter of, I think, medical testimony that others should probably comment on.

5

10

Q. Fair enough, but in any event, if you agree with me that all of these Olympic tests or Olympic reported tests are virtually all in-competition tests and if you agree in general that athletes are able to prepare themselves in a way if so inclined to avoid a positive result, then one has to look at your three percent number with, in fairness, a certain degree of objectivity if not skepticism?

A. I am not sure what you meant by the last part, sir.

15

Q. Well, if an athlete is taking a drug during a training period, stops taking it prior to a competition so it clears his system, he is not going to test positive. He is going to test negative. And if you are only testing that athlete in competition, he will never show up in any of the available figures?

20

A. That's correct.

Q. So that the in-competition test results that show two or three percent positive tests, doesn't in any way tell us the scope of the problem?

A. That's correct.

25

Q. Okay. Sorry, I took us down a path that you didn't anticipate nor perhaps did I that I was going

to take you and I will get you back on track to exhibit
19.

A. Okay. Well, in chronology we are in
the middle of page 3, and we are about to engage in
5 planning discussions with those representatives and
countries we felt it was important to touch base with
prior to the world conference. And so we undertook a
series of discussions in Paris with the IOC Vice
President, Alexander de Morode; George Walker, the
10 Secretary General of the Council of Europe sport division.
We met over a couple of days with Manfred Evold and his
officials in the GDR to gain his support for the
conference. And after considerable discussion,
notwithstanding the point of philosophy that I alluded to
15 earlier, he nevertheless agreed that the world conference
was a good idea and that the GDR in the end would
participate fully and enthusiastically.

We then went on to a meeting in Cologne,
West Germany, where we made a presentation to a meeting of
20 the European Sports Conference. There were about 15
nations there present, about 10 from Western Europe and
about five from Eastern Europe. And the presentation went
very well. And they agreed that this was a good idea,
good initiative, and that they would indeed ensure that
25 their countries would have the kind of representatives

there that would be appropriate.

So, after much planning and extended invitations, we arrived to the June period of June 26-29, when the first world conference was hosted in Canada and co-chaired by the IOC and Canada.

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THE COMMISSIONER: Mr. Armstrong, I think this would be a proper time to have a short break and give the witness a rest.

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--- Whereupon a recess was taken at 11:25 a.m.

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--- Proceedings resumed pursuant to mid-morning adjournment

THE COMMISSIONER: Mr. Armstrong.

5 MR. ARMSTRONG: Thank you, Mr. Commissioner.

Just on a housekeeping matter, if we could take a shortened lunch hour, I think we've spoken to you about that today, in order to accommodate some people's travel arrangements because of an engagement in Ottawa?

10 THE COMMISSIONER: We'll sit from 2:00 to 4:00 this afternoon.

MR. ARMSTRONG: Thank you.

MR. ARMSTRONG:

15 Q. All right. We were, I think, ready to launch into the Ottawa conference?

A. Mr. Commissioner, in June 26 to 29 then, there was the first world conference on anti-doping in sport held in Ottawa, Canada, co-chaired by the IOC in 20 Canada with 28 nations, representatives from the sport community of those nations and from governments, as well as representatives from the IOC and several International Federations.

25 It might be appropriate, Mr. Armstrong, to enter the conference report?

Q. Fine.

MR. ARMSTRONG: Mr. Commissioner, I have a copy for you and this is the First Permanent World Conference on Anti-Doping in Sport, June 26 to 29, and what we have here is the report of that conference. If that could be Exhibit 21?

5
---- EXHIBIT NO. 21: Report of Conference on Anti-Doping in Sport - June 26 to 29.

10

THE WITNESS: The, Mr. Commissioner ---

15
MR. ARMSTRONG:

Q. Go ahead, please?

A. The conference report outlines, I think, the products of the conference which included a common declaration by all 28 countries which notably called upon several things but, in particular, I think asked the IOC to assume overall responsibility for those parts of the charter dealing directly with sport and asked the IOC to insure the implementation of the charter and asked that the IOC establish valid principals and procedures for a world-wide uniform campaign and to work with the International Sport Federations to adopt these principals and practices; those statements are contained

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in the opening declaration which the 28 nations agreed to.

The conference also then produced a statement of -- or a set of principals that were to underlie the world-wide campaign in the years ahead.

5

Secondly, it produced a model for a world charter which model basically still stands today.

And thirdly, it produced a general and brief outline of a model national program which was developed in more detail -- which is presented in some detail and developed in more detail at a later point.

10

This model national program which I'll comment on later was considered to serve as a guide or an aid to countries to implement an anti-doping program in their nation. I think ---

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Q. Just to identify the documents that you've just referred to within this report, the first document is the final declaration that you referred to, and it's not numbered in any way and indeed the document that is numbered document one is the principals document that you referred to.

20

The next document is document number two, the International Anti-Doping Charter. That's the charter that you say remains unchanged today and is still the operative document so far as the charter is concerned?

25

A. Correct.

Q. And then document number three is the model for the national anti-doping program that you just referred to?

A. That's correct. The rest is a list of 5 participants.

Q. All right. All right; go ahead, please?

A. I think that one can draw a number of important observations from this conference.

10 First of all, I think it perhaps was the first time in the world level where there was a mix of representatives from governments and the voluntary sport movement who came together to address an important concern in the field of sport and I think it legitimized the co-operation and the idea that, in fact, governments in 15 the sport community could work together and could find a basis for joint worth.

I think the conference also helped to establish the IOC as the expected leader world-wide in the 20 anti-doping movement fight, at least among the sport community internationally.

Thirdly, clearly, the conference made a statement in unanimously adopting, if you will, as a model, the world charter which they saw, I think, as a 25 moral instrument, as an item for, or a basis for, a common

world-wide approach and as a prescriptive useful mechanism to give guidance to different nations and federations as to how an anti-doping program should be applied.

It also, I think, the conference indicated
5 that the next action agenda would clearly be two-fold; one, how governments were going to relate to this charter and begin to involve themselves in the anti-doping fight and, secondly, how the IOC was going to involve itself as the established leader and how it would relate to the
10 International Federations.

Indeed, I think at the end of the conference, the big questions remaining, yet unanswered at that point, was where were the International Federations on this question? How were they going to relate to all of
15 this and to the IOC?

The conference also, of course, did not address testing and reporting and that still remained a big agenda item.

But generally, I think it was felt that
20 there was considerable progress and that this was the basis for an action plan that countries of the world in sport could relate to.

So it was agreed that the document would be completed and would be taken to the IOC meetings in Seoul,
25 which they subsequently were. The document actually went

before the IOC Executive Board in draft form at a meeting,
I believe, in late July and received support and approval
in principal and then formally went before the Executive
Board and before the assembly of IOC members in Seoul in
the week before the games started on or about September
5 13th, I believe, at which meeting ---

Q. Just before we get to what happened at
Seoul, I wanted to ask you a couple of questions about the
people or organizations, countries, represented at the
10 Ottawa Conference.

Looking at the list of participants, you
first of all list them by sport nation and then you have a
list of ---

THE COMMISSIONER: Sport organizations.

15 MR. ARMSTRONG: Sport organizations.

MR. ARMSTRONG:

Q. Now, were all of the international
sport organizations invited to attend? By that I mean,
20 I'm particularly interested in the International
Federations because I see that, for example, the
international -- I saw it a moment ago, just lost it, the
International Swimming Federation or whatever it's proper
name is?

25 A. The Amateur International Swimming

Federation.

Q. The Amateur International Swimming Federation at page 15, it was there as a participant or an observer?

5 A. As a full participant.

Q. Now, what about, for example, the International Amateur Athletic Federation which is the International Federation for track and field? Was it invited and did it attend in any way?

10 A. They were invited and they did not attend. Not all of the International Federations were invited. We, through the planning group, did an invitation of a cross-section of International Federations, those we felt that were probably most relevant and most needed to be at the table.

15 And if there was, I think, any sense of disappointment in the response it was with the lack of a full representation from the International Federations. Of all the 28 countries that were invited, all sent delegates.

20 Of all the International Federations that were invited not all sent delegates and the IAAF was invited but did not send a delegate.

25 Q. What reason was offered for their not attending?

A. In specific terms, I think late -- very late and close to the conference, I vaguely remember that there was a response that the president had other commitments and that what was the only response we received.

5

We would, of course, certainly have accepted other representatives, didn't necessarily have to be the president, but that was the response we received.

10

Q. And the president of the IAAF is Mr. Primo Nebiolo of Italy?

A. Correct.

Q. And is there an International Weightlifting Federation and was it invited and did it attend?

15

A. Yes, they were invited and, yes, they attended. I'm trying to -- because some of these people wear various hats. I believe it might be under Mr. Tamas Ajan from Hungary is a senior executive member and it might indeed be under Hungary.

20

Q. His name is at page 13.

A. Page 13 undre Association of Summer Olympic International Sport Federations. Yes, as you can see, the general secretary of the International Weightlifting Federation.

25

Q. But was he attending wearing his

International Weightlifting Federation hat or was he attending as a member of the Association of Summer Olympic International Sport Federations or both?

5 A. I would say both. I would say that the nature of his input and involvement would position him more as a representative of the IWF.

Most occasions when he commented from the floor on developments he talked about what the International Weightlifting Federation was doing. So, by 10 virtue of the weight of his dialogue, I would say that he represented them more.

THE COMMISSIONER: Mr. Gottfried Schodl is also there. He's the president, I notice, of the International Weightlifting Federation?

15 THE WITNESS: Yes, thank you.

MR. ARMSTRONG:

Q. Yes, again on page 13. And there were a number of people invited with observer status and, 20 looking at page 16, I note that, at the bottom of the page, Dr. Bryce Taylor was there.

Now, there are two Dr. Bryce Taylors in the sport community in Toronto. I take it that that ---

25 THE COMMISSIONER: That's a member of my panel.

MR. ARMSTRONG:

Q. That's a member of the Commissioner's panel?

A. Correct.

5 Q. And then I'm looking at page 17, the name of Thomas Bedecki, Ph.D, Executive Director of the Canadian Association for Health, Physical Education and Recreation and he's also a member of the Commissioner's sport panel?

10 A. Yes, that's the same Mr. Bedecki that -- he was there as an observer.

Q. All right. Then one of the sort of overriding objects that you have annunciated is that in this initiative that Canada was taking, since before 15 Dublin in 1986, was to persuade others and the International Olympic Committee to ultimately play the leadership role in anti-doping.

To what extent have the International Federations, if you're in a position to tell us, accepted that underlying principal, as it were?

20 I mean, is the International Track and Field organization, who apparently was not at this conference, is it prepared to accept the IOC as the leader in this area?

25 A. I would say that those discussions are

still proceeding. I'm not sure of the state that those
bilateral discussions might be in. In general terms, I
think it would be our impression that the linkages between
the International Federations and the IOC on this question
are still tentative; that the International Federations, I
think generally, guard their independence and
self-determination in their various matters quite
strongly.

5

That the IAAF has not yet, I think,
indicated, at least, not publicly, an intention to form a
strong linkage to the IOC on this matter of anti-doping
other than through the Olympic Games where they clearly
have an obligation.

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I would also note that the head of GAISF,
the General Assembly of International Sport Federations,
Mr. Luc Niggli, commented, I think reasonably strongly, in
Ottawa upon the independence of the International
Federations and felt that it would be difficult if he
would, for the International Federations, to agree to be
part of any kind of common program that was centrally run
outside of their International Federations.

My sense, however, is that ---

Q. Well, is that because it, from a
practical point of view, can't be accomplished or is it
turf protection or something else?

A. I think it's closer to the latter. The International Federations would, I think, start with two assumptions. The matter of running their sport internationally, I think they would say, is the responsibility of their federations.

And secondly, the only responsibility the IOC has is to run an Olympic Games every four years and during those Games, the athletes of their federation are clearly under the rules of the IOC, but during other periods they are not.

I'm stating what I think reasonably faithfully what International Federation would generally say. Certainly those that are stronger and more independent minded which tend to be the higher profile International Federations.

THE COMMISSIONER: Where does that leave us? Without their accepting these principals, what validity has the document got?

THE WITNESS: Well, this was part of what was seen to be, I think, an ongoing and complex fight, if you will.

What the document serves to do is say that here are 28 leading nations in sport whose own sport leaders want to see a common world-wide approach and in declaration asked the IOC and IF's to get together.

So you have, if you will, what we hoped would be the beginnings of a strong campaign by those countries to the International Federations.

Secondly, we hoped to, if you will, steal
5 the resolve of the IOC to move ahead in a stronger fashion because, as we said, we felt the IOC nevertheless had the key to the ultimate club, the Olympic Games, and could, in fact, declare a set of rules by which the IOC would choose to involve itself internationally outside of those games
10 and there would be no question that that would be resisted and that it would be a difficult fight, but we felt it was the only way and we wanted to indicate the support of the nations in sport for this type of resolve that we hoped the IOC would assume.

15 THE COMMISSIONER: Without that then, this would not be very effective, will it, your charter? If you recognize in the sense the independence of the sports federations but would hope that they would accept the principals of the charter and work within it.

20 That's what you're seeking, am I right?

THE WITNESS: That's right.

THE COMMISSIONER: You haven't accomplished that yet, I gather?

25 THE WITNESS: No, that's correct. Clearly, the charter would only be one mechanism, would not be the

answer. It is, after all, voluntary. Really, the charter is mainly concerned with attempting to gain common agreement amongst countries. We felt that it would be a basis clearly for having International Federations sign and endorse and support the philosophy behind it but that the larger fight between and among the IOC and International Federations would need to be undertaken through other steps, some of which have begun to happen.

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THE COMMISSIONER: All the International Federation is, is merely an amalgam of National Federations?

10

THE WITNESS: That's correct.

THE COMMISSIONER: You fund most of the National Federations?

15

THE WITNESS: In Canada we do.

THE COMMISSIONER: Wouldn't that give you control over their activities if they are not prepared to comply with these directives?

20

THE WITNESS: Well, sir, our relationship of national to international is one-on-one. We fund many national federations in Canada but only one of them relates to the International Federation.

25

So our clout, we'll say, with the International Swimming Federation is just by virtue of the fact that we fund the Canadian Swimming Federation.

So we would expect the Canadian Swimming Federation to take the cause to the International Federation. But at that point, the Canadian Swimming Federation would be dealing with 60, 90, 100 other federations from countries around the world.

5

Again, as you may be alluding to, our hope for the charter was that other governments in other nations would follow the same track as you're suggesting and that they would urge their national federations to take the same cause internationally.

10

But, I also think it's fair to say that the culture of International Federations is a complex and a long standing one. Most of the International Federations are European based. They are led by executive boards with individuals who have been in the international fraternity for a long time.

15

They have an established power bases, if you will, and are very strong people and, generally speaking, the affairs of an International Federation are, through most of the period, run by the executive board rather than by the assembly of all the countries who may get together fairly infrequently.

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THE COMMISSIONER: But the implementation of the policy and the policing of it, is obviously to be left with the organizations, not by government. Is that as I

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read that?

THE WITNESS: That's correct -- well, it's a bit of both. The charter says that governments should undertake the roles appropriate to them. But you're right, that the overall sense of harmonizing a world-wide approach is desired to be done by the sport community, hence the IOC and the IF's.

THE COMMISSIONER: I'm sorry, Mr. Armstrong.

MR. ARMSTRONG: That's quite helpful Mr.

10 Commissioner.

MR. ARMSTRONG:

Q. Just as a followup, if I could take you to the first document in the charter which is the final declaration and we looked at page 2?

15 A. Yes.

Q. And at the top of the page it says; "The conference unanimously accepts the three attached documents and accordingly recommends that..."

20 And we go down to number six;

"The IOC assumes overall responsibility for those parts of the charter for which sport is directly responsible.

25 And in co-operation with the

International Sports Federations, the National Olympic Committees and other sports organizations, insures the implementation of the charter."

5 And then if I could take you over the page to page 3 of this final declaration, number eight; "The following further steps be taken to improve international uniformity and harmonization.

10 (A), that the IOC establish generally valid principals and procedures for a world-wide uniform campaign against doping and strongly urge the International Sports Federations to adopt these principals and practices.

15 (B), that all International Sports Federations accept the IOC doping rules and regulations and apply them consistently to provide a world-wide uniform approach in future in order to achieve fair and just controls."

20 Now, my question is this, that bearing in mind this document says that the conference unanimously accepted the three attached documents and makes these recommendations, I am assuming that the representative of

the General Assembly of International Sports Federations, Dr. Luc Niggli, must have voted in favour of this final declaration?

A. Yes, that's fair to say.

5 Q. And I take it that at least the

organization, the umbrella organization of these the IF's at least, from your perspective, have taken the public and international stance that it agrees in principal with the IOC taking the lead?

10 A. No, I'd have to say that

notwithstanding your observation about these declaration statements and the assumption that them having been written into the record with no dissenting votes, that Mr. Niggli was, therefore, if you will, agreeing that GAISF, the international body, would support these in their entirety.

15

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I think Mr. Niggli, it would be fair to say, would support the idea of the IOC and IF's sitting down to talk about all of this but I would have to say, in fairness, that his position at that conference was fairly strongly stated that he did not hold out strong encouragement for the probability that the IOC and the IF's would agree to a common approach given their sense of independence.

25

In fact, we should understand that there was

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then and to agree there is now what, in all fairness, I think would be called a power struggle between GAISF and the IOC for the, if you will, the role of the major umbrella agency on the world scene; GAISF representing the umbrella agency of the IF's and the IOC having a connection with them but running the big event, the Games.

I think that power struggle was demonstrated in that meeting and still is there today.

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Q. And does it simply come down to that, that the International Federations really look then upon the Olympic organization as an organization that runs an international competition or competitions once every four years?

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A. Yes, and I think that the impressions are going to vary from federation to federation. Generally speaking, that would be a summation of the role most would see as the primary role. I think many would also recognize that the IOC engages some other things; helps to develop sport throughout the world and carries a set of Olympic values which it attempts to endow within their National Olympic Committees throughout the world. It isn't just an organization that runs games.

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Q. I'm not suggesting it is and I wouldn't suggest that you would suggest it. But reduced to its simplest terms, those International Federations that may

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be protecting their own turf as it were, may operate from that premise, that look; you, the Olympic organization, the IOC, you run your Games every four years. You've just done them in Seoul, you're going to do them in Barcelona in 1992, but the rest of the sporting world goes on and we're, in our own particular areas, are going to continue to run it in accordance with our rules?

10

A. I think that's a fair summation. The only point I would add to it, in fairness to the IF's, is that the IF's have said in the matter of doping control that now that they accept the IOC list as the core central list and the IOC accredited labs as the mechanism by which athletes should be tested, what they would then say is that it's the IF's business outside the Olympic Games to apply that list when they think it's relevant and use the labs when they think it's relevant.

15

But, they have accepted the IOC's leadership in identifying the classes of banned substances and the establishment of the labs as the standard in the world.

20

Q. But ---

A. But the rest of your statement, sir, I agree with, is a fair summation of their impression.

25

THE COMMISSIONER: What puzzles me if all the agreements agree to these matters and all these Sports Federations, nationally and internationally, are funded by

government, why can't the government enforce these things?

THE WITNESS: Well, that a good question.

The International Federation, if you will, tends not to be funded by governments.

5

THE COMMISSIONER: I understand that but the national federations which form the International Federations are funded?

THE WITNESS: Yes. Well, I think it's fair and perhaps it's simply a matter of the passage of time.

10

The intent was that, coming out of the conference, these countries, through their governments and their sport community, would somehow begin to influence their International Federations. The conference is only now six months old but I think that was one of the assumptions.

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THE COMMISSIONER: Thank you.

MR. ARMSTRONG:

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Q. All right. I want you to really take us through the chronology, for the last few minutes I've been preventing you from doing, and I think we should get on with that.

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But I may want to come back, Mr. Commissioner, to ask Mr. Makosky some questions about the charter itself but I think the chronology completes the

picture because this charter is, in fact, a living document and it goes on from Ottawa to Seoul which is where we were just about ready to go before I interrupted you.

5 So, we're now in Seoul and there is a

meeting in Seoul that deals with the charter, Mr. Makosky, and can you tell us what happened there?

A. Yes. Just before we get to Seoul, I
should note that in Ottawa, in order to advance the
10 charter further, since it was established there as a
model, if you will, there was an international working
group then formalized which was agreed to by all the
conference delegates and was made up of the previous
informal working group to which we added now
representatives of other nations who had been -- who are
15 and were important to this fight.

So, it contained the representatives that
I've mentioned before, that is Canada through FNA, as
officials, and the laboratory representative in Montreal,
20 the International Olympic Committee with Prince de Merode
as the vice-president. The United States Olympic
Committee with Dr. Don Catlin and Robert Voy.

The Council of Europe with George Walker to
which we then added representatives from the European
25 Sports Conference. The head of the Special Experts Group

of the European Sport Conferences is currently a gentleman from the United Kingdom whose name is Arthur Gold who is now the Chairman of the British Olympic Association and I believe is heading up either a or the investigation in the U.K. right now on anti-doping.

5 From Norway, Hans Skaset. From the German Democratic Republic, at that point, a person -- that person wasn't named there -- Mr. Gunther Heinze, who is a vice-president of the DTS and GDR.

10 And from the Soviet Union -- I forget his first name but his last name is Gromyko. A representative was appointed from there who was also in attendance at this world conference and that became the group and is today the international working group working on advancing
15 the charter and beginning to work on other items as well.

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So we polished this document and submitted it in Seoul. The document is which is tabled before IOC Executive Board and endorsed by them, and at the same time, I believe that evening or a couple of days, the
5 President of the IOC in his opening address to the assembly of all the countries made particular reference in his openings remarks to the anti-doping fight, the phrase which is now becoming somewhat famous and I quote:
"Doping is death", which notionly may be giving a slightly different impression from the translation from the French and Spanish where it is likely he wrote the speech initially, but the message he explained was to indicate that the IOC was now considering doping and the anti-doping fight to be their number one issue, if you will, and they were going to be extremely serious about
10 15 it.

That occurred in just a few days or the opening days before the Seoul games began. During the occasion of the games, we also had a meeting of this international working group and began to look at the charter strategy which got further polished over the fall and advanced into meetings later in the fall.
20

I think it's fair to say that we can't, at this point in time, talk about the subsequent events without talking about the events in Seoul with respect to
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the impact they had on the pace and the advancement of the international anti-doping cause. It is probably useful to note that the number of positive tests in Seoul were actually less than the number of positive tests in Los Angeles. If my numbers are correct there were 11 positive tests in L.A. and 10 in Seoul.

10

So it is not like the number of positives were all of a sudden significant on the world scene, but what clearly was significant was the singular event that catalyzed, I think, in some dramatic change, and that was the incident involving Ben Johnson.

15

And the results of that incident in the days following with respect to this worldwide fight I think had several signals that were transmitted.

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Certainly a number of people that we spoke to, I think, shared this same message that there was a sense of dramatic transmittal, I guess, to the sport community. The message is during those days and shortly thereafter was that the science of testing with an, indeed, sophisticated, perhaps better than many thought, and, indeed, it was a process which by all measures was seen to be a technically secure process, the measure of security of managing this process was demonstrated and significant, and I am sure you will hear testimony later outlining that.

Secondly, there was a signal --

Q. I just wanted to pause here.

The observations you are making now are
unrelated to the merits or lack of merits of whether or
5 not Mr. Johnson tested positively or not. You are simply
saying what the observations were and what some of the
conclusions were that were drawn from that fact of a
report of a positive test of Mr. Johnson and what seems to
have followed from the fact of reporting it?

10 A. That's correct.

Q. All right.

A. Secondly, I think the signal was given
in significant form that the IOC would not protect or
conceal in any way any results. There has been, from time
15 to time, challenges or claims in other international
meets, other international venues, that there has been
alleged indication that there has been a concealing or a
protection of positive results.

This was, if you will, a signal that was
20 interrupted, the IOC would not undertake any type of
action in that way.

The third observation, I think is because of
the process that the IOC had for the review of a positive
result, the hearing of an appeal or what was called the
25 appeal to the IOC Medical Commission, and the indication

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of the penalty. I think the indication by the IOC is that that process would be swift, would be irreversible, because they stated, even in their press conference, that the decision was non-appealable, and that it would be consistent across athletes in drugs according to the rules of the IOC. And I think that's a third signal that was given as a result of the actions that followed in the games.

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I think at the same time there was no question that it has raised the issue to a worldwide -- to the worldwide agenda in a very dramatic fashion, and I think it has hastened the pace by which the other developments we have been speaking of have been able to proceed, including and, in particular I think, I would say the IOC leadership in recent months.

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We have seen, I think, several steps that have resulted as a result of this hastened pace, the discussions in Moscow that we will come to, the variety of government legislation that have been launched in the recent months, I alluded to those yesterday, the series of investigations that have been launched, which I alluded to yesterday, and indeed, some of the international federations beginning to take fairly strong steps in their discussions about controlling the concerns of anti-doping or the concerns of doping in their sport.

I point, by way of an example and only example, to some interesting developments in the International Weightlifting Federation, notwithstanding or regardless of the debate around that sport and its involvement. I think some of the ideas are indicative of some the more dramatic action that international federations are prepared to consider.

5

By way of a couple of examples, the IWF has considered, and I am not sure, I believe it has been finally approved, a couple of typical actions: One, that when an athlete from a country has been tested positive in weightlifting at an international game at world championships in weightlifting or Olympics, then the International Weightlifting Federation would actually suspend membership of the whole federation of that country.

10

And, secondly, that the IWF would demand a name of the person who had either supplied or counseled or who would have been responsible for the direct liaison of that athlete in terms of obtaining the drugs or being counseled to take them, and if that name was not forthcoming, the IWF would then suspend from involvement internationally the national coach of that sport of weightlifting at that point in time at those games unless a different name came up.

15

I am not going to comment on the appropriateness or not, but I think that those are quite dramatic steps.

5 Q. Now, is that a recommendation at the present time or have the IWF accepted that as an

enforceable rule of operation?

A. I would like to check that but I believe that was endorsed at a general assembly of their members this fall.

10 Q. So, I just want to make sure we have it. If an American weightlifter were participating in an international federation sanctioned event and tested positively for some banned substance on the IOC list, do I understand what you are telling me is that the rule, if it 15 is adopted, would result in the US Weightlifting Association, whatever its name may be, being suspended from the international federation?

A. Yes, that's correct.

20 I would want to check whether or not it applied to all sanctioned meets or whether it applied just to the more significant ones or world championships.

Q. Which is world championships?

25 A. Certainly for world championships that is what will occur. I believe for a first time offence this suspension would be for one year in which therefore

no athletes from that country would be able to compete internationally. They could, of course, compete domestically, but not internationally in that sport for a period of one year.

5

Q. All right. Well, I guess in any event the message to be taken from that, whether or not this is a firm rule and what the exact parameters of it are, that there is a clear recognition internationally within that sport that there is a problem to be dealt with and dealt with seriously?

10

A. Yes.

Q. All right.

A. I think the next event, Mr.

15

Commissioner, we would note began at page 5, was the European sports conference seminar on out-of-competition testing. When we had the meeting in Ottawa in June, the conference produced a list of annexes which were intended to describe the -- if you will -- the attachments to the charter that would serve as guidelines and aids to the various countries in order to apply a worldwide anti-doping program in their country, and that list of annexes is contained in the conference document.

20

Those annexes were reasonably well advanced by that point with the exception of guidelines on out-of-competition testing, and it was fortuitous at that

25

point that we noted that the European sports conference had already and previously decided to hold a conference on this subject in Borlang, Sweden in October, and so we decided to wait until then to allow the results of that conference to produce guidelines on what should become the contents of the annex to the charter, in particular, dealing with out-of-competition testing.

5 THE COMMISSIONER: Where do I find that?

MR. ARMSTRONG: I'm sorry.

10 THE COMMISSIONER: Where do I find that?

MR. ARMSTRONG: It follows along right after Exhibit 20, which is the Dublin speak of Mr. Jelinek. You will see a document, and it might be a good time to mark this as an exhibit, Exhibit 21 became the Charter, and the next document that we want to mark as an exhibit is the 15 document headed, "First Permanent World Conference on Anti-Doping in Sport, International Anti-Doping Charter for Sport, Table of Contents for Annexes."

Could we mark that as Exhibit 22?

20 THE REGISTRAR: 22, Mr. Commissioner.

--- EXHIBIT NO. 22: Document headed: First Permanent
World Conference on Anti-Doping in Sport,
International Anti-Doping Charter for Sport,
Table of Contents for Annexes.

MR. ARMSTRONG: And you have here, Mr. Makosky, a list of the annexes, and on page 2 is the model for the conduct of out-of-competition testing that you just been referred to?

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A. That's correct.

THE COMMISSIONER: Is that 22?

THE REGISTRAR: Yes.

10

THE WITNESS: Perhaps if I could just refer to them briefly, because they are important documents.

15

In and of themselves each one represents a rather significant contribution to the international fight, if you will. This list is slightly different than the annex list that is contained in the conference document. That's why we have entered it this way, because this is the most up to date list now agreed by the international working group as recently as the first week of December in Vienna.

20

The first item relates to the IOC requirements for accreditation of good laboratory practises. This document is now complete. It outlines the detailed requirements, as well as a code of conduct for those laboratories, and I think it's quite important in achieving a common approach throughout the 22 labs world wide. It is an IOC publication.

25

Secondly, the IOC banned restricted classes of drugs and doping methods, we have entered that as a separate exhibit, that would simply be an annex here.

5 Third is a model national program. There are 2 points about this. The description of the model national program in it's short form as it exists in the conference report from Ottawa is what would become annex number 3.

10 However, there is a larger description which goes into more detail on the model national program and how it would be implemented, which is being created as a separate guideline booklet. And that is going to be accompanying the charter, not as an annex, but a kind of guideline of 8 countries, and I believe that at a later 15 point here we will see that as an exhibit.

20 Fourthly , standard operating procedures. Again, this is an outline produced by the IOC as to how doping controls should be conducted in order to follow appropriate and due process to ensure the integrity and ownership of the collected sample. The process is followed at all other Olympic games, and that, by and large, most countries in the world who undertake testing and utilize an IOC laboratory also follow.

25 The fifth one is the one I have just noted, and that's the one that the Borlang conference helped to

shape, and that is the description of the underlying guidelines and principles and procedures for out-of-competition doping controls.

Now, the results of the Berlong conference
5 have only been received in draft form, and we utilize those draft materials in this international working group to, if you will, put together this series of five statements underlying, under the type, it says, "Principles for out-of-competition testing."

10 We have noted them because they will be the principles contained in this annex and it will be the basis for the guidelines that will be used to describe the balance of this annex number 5. And they are significant because they are, I think, in terms of out-of-competition
15 testing, on the aggressive side of intervention, if you will, and I think it's perhaps noteworthy to note each one.

First of all, that out-of-competition testing should be carried out on a year round basis.

20 Secondly, that the central governing body responsible for doping control should have the right to select the priorities among sports, sporting events, and individual athletes for out-of-competition testing.

25 This point is in response to the question of whether or not testing should be random. Up until

recently I think the common approach for
out-of-competition testing in order to ensure, we will
call it complete objectivity, has been to follow the
principle of put all the names in the hat of those that
are eligible and draw them out in a random basis. And I
think increasing what is being said and what is being
demonstrated here is that the logistics and the costs of
testing everyone on a frequent basis are so huge that it
does not make any sense to be testing large numbers in
many sports that are not clearly a concern for doping
control; that it is appropriate for the sports system to
make choices, to be selective, if you will, about which
sport should be tested more frequently than not, which
events in which sports should be tested and, indeed, even
individual athletes who participate in those events should
be tested more frequently as part of an out-of-competition
testing.

Q. Now let me just stop you there.

Is there any consensus among the charter
working group if I can call it that, as to what are the
sports that attention should be focused on so far as
out-of-competition testing is concerned?

A. We have not explicitly discussed that
item. My impression would be, it would be, it would not
take very much discussion to arrive at a common list. You

might differ when you got down the list a little bit, whether one or more sports be on the final list, but the initial list I think would be arrived at reasonably quickly.

5

Q. And if that discussion were to take place, what would your observation be as to the sports that there would be consensus on that out-of-competition testing should be a central feature for it?

10

A. I would think initially the more obvious ones would be weightlifting and track and field, particularly for the steroid classes. I think that there are other sports where some of the other banned classes of substances are a concern; emphetamines for instance in sports like cycling would fall into that realm.

15

Eventually, and when and if the consideration and concern for blood doping reaches a stage where that can be effectively tested for, those endurance sports, such as cross country skiing, would likely and quickly fall in that category.

20

What there is at this point, I think technically some more consideration that would need be undertaken in the matter of blood doping, and you will hear testimony on that.

There would be some of those obvious ones.

25

There might be others that there might be a further debate

on. Questions like perhaps swimming or rowing which clearly can and could involve the need for significant muscular development and may be considered the source for immediate and high priority testing. Those might be more of a debate of one. But I think the ones I have indicated would be the more obvious ones to start with.

Q. And I take it then of the sports that you have mentioned about which there is unlikely to be any debate if your working group were sitting around this morning talking about the implementation of a principles of the charter, and in particular the implementation of out-of-competition testing, that group would, in all probability, agree with you as to the sports that you have named that there would almost be certain agreement on?

A. I believe so, yes.

Q. And that would include both east and west block countries?

A. That's correct.

Q. All right.

A. The third principle outlined under this statement of principles is that the out-of-competition testing program should be implemented without prior notice, and there is a fair bit of debate going on internationally whether should be what is called short notice testing, which, generally, at least people agree

should be in the neighbourhood of 48 hours or less, and
with another point of view of this, there should be no
notice that in fact the athlete, that the testing team or
an agent of the testing body should be able to approach an
5 athlete and indicate that the athlete is to be tested
immediately within obviously certain convenient givens;
that the athlete has to be able to be comfortable and
moved to an environment where the testing can be under
taken.

10 And indeed, the working group concluded that
without prior notice is, in fact, the main principle in
the way that the international scene should go. That
therefore the athlete should be given a notice in writing
by an agent of the central governing body responsible for
15 doping control in that country or internationally and that
the athlete should be accompanied by an agent from the
time the notice given until the actual testing.

So again, I would say that's --

Q. That's not without notice then is it?

20 I mean -- and perhaps I didn't follow what you said.

THE COMMISSIONER: Without prior notice.

MR. ARMSTRONG: I thought you said without,
that the working group was going in the direction of
without prior notice?

25 THE WITNESS: That is correct.

THE COMMISSIONER: Well, this system would not be prior. The agent appears on the scene, is what you are saying?

5 THE WITNESS: That is correct. And accompanies the athlete to the test.

THE COMMISSIONER: Without notice.

MR. ARMSTRONG: So I mean reducing it to its simplest terms, using my associate ---

10 THE COMMISSIONER: Why pick on Mr. Proulx all the time? We have got a lot of other athletes here.

MR. ARMSTRONG: Well, he's the best athlete in the group.

THE COMMISSIONER: Well, I am not sure about that.

15 MR. ARMSTRONG: We are not going to let your tennis game get into this hearing at any time.

THE COMMISSIONER: I am not sure about that either.

20 MR. ARMSTRONG: We will lose complete credibility.

Q. Now, Mr. Proulx, my swimmer, is it as simple as this, that "without prior notice" means that you, as the official agent of the Canadian swimming federation -- I'm sorry, I forget all the proper names of all these proper organizations -- that you would come

along and literally tell him this morning that we have got
to get you to an appropriate location where this test can
be conducted, and there are no if's, ands, but's, maybe's
about it, he can't say he is sorry, he has got to be in
court this morning?

5

A. Well, yes.

The principle is as you have stated it, but
there surely would from time to time might be extenuating
circumstances. I mean, there could be particular personal
10 circumstances of personal deprivation or whatever if
something is happening, I don't think anyone would want to
step into -- obviously any agent would always want to be
considerate of, but in general your point is exactly the
way it would occur.

10

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Q. And that's the unanimous view of the
working group?

A. Of the working group; that's correct.

Q. And again that group includes both east
and western block representatives?

20

A. That's correct.

Q. Okay, fine.

Again, I interrupted you, please proceed?

A. Yes.

25

Number four states that the
out-of-competition testing program should test for those

classes of banned substances as appropriate to the particular circumstances with a special focus on anabolic steroids, as well as pharmacological and chemical manipulations, which is to say that there are some sports where certain classes of drugs are more important than others.

But in general, one should always have a special focus on anabolic steroids, as well as the second category pharmacological manipulations deals with such things as blood doping and growth hormones and that sort of thing.

So those would seem to be the major focus, but a realization that there could be some selectivity in the focus of testing, vis-a-vis, substances depending upon the sport in certain circumstances.

The fifth point talks about the recording of results, which we had noted earlier had been an ongoing concern, at least of Canada's, from the beginning was on our agenda, and there was agreement around the table in Vienna of the international working group there should be annual reports of all positive test results forwarded in confidence to the national governing bodies concerned, plus the respective IF's and the new IOC anti-doping commission. We haven't talked about the IOC anti-doping commission, it is in the chronology in the next step. But

when the new Commission would be formed, the statement says that all positive tests should be reported to them as well.

So, it would be, if you will, in effect the first time that a central agency would receive all relevant information on positive tests, which would include in confidence the names, sports, dates of tests and the banned substances found. That reporting is currently not -- currently does not occur to the IOC. And that the IOC labs should annually report all the results, both positive and negative, to the new IOC Commission.

So, I think, Mr. Commissioner, those series of statements were seen to be strong and on the aggressive side, and deal with the rather important annex. The last two annexes I just want to note would be on the next page "Sanctions and Penalties." This would simply be a list of an agreed set of sanctions and penalties for all doping or doping violations worldwide, with a view to establishing one standard of sport, one standard approach for all sports and all countries.

Finally, that the protection of the rights and responsibilities of the participants would be an annex, and this would be rather more descriptive of the main principles that countries should undertake and federations should undertake to assure due process and

that the rights and responsibilities of those persons involved are protected.

Recognizing that different social systems and different states will interrupt due process and rights in different ways, one could not, it was clear in the discussions, apply a model here that would be, let's say too detailed, and it follow the legal construct of, we will say a western based nation exclusively. It needed to be sufficiently broad enough to allow all countries of the world to understand and use them in a way appropriate to their social conditions and their state.

Q. I don't want to get into legal issues and ask you questions of law, but in your discussions have there been concerns expressed, for example by the United States who would say that we may have or will have problems with athletes challenging a testing program, as aggressive as this one appears to be, in the courts?

A. Yes, I think so.

The USOC has stated that on previous occasions, and again, while agreeing to the principles for out-of-competition testing, did note that they would have some difficulty in their country, but they still agree that these should be the principles at play.

Q. And what about the eastern block countries, is that kind of problem a problem for them?

A. It has never been discussed extensively by the eastern block countries. I would say that when the discussions occurred around the table on rights and responsibilities of the participants, there was common discussion on responsibilities of participants or ethical conduct, responsibilities of the coaches and managers, as well as athletes, all of that, but when we had discussions on the rights and due process I would say that the conversation was not as extensive and would be more contained to some of the concerns that some of the western block nations had on the working group, which is not to say that it is or is not an issue in the eastern block, only that there was not extensive discussion about the particular circumstances in their country regarding rights issues.

Q. One would think it would be more logical from what we know historically of the political development of the legal developments in those countries, that it would likely be a greater concern in the United States than it would elsewhere. Is that not a reasonable conclusion to draw?

A. Generally speaking I think that's fair. Although some of the western European nations have talked about this being quite a difficult area as well. I wouldn't relate it exclusively to the United States. It

would be for them a significant challenge, but not insignificant for many other western nations, including potentially Canada.

Q. All right. I think that is probably
5 all I want to ask you about the annexes, unless you want to provide us with any other observation. I see that in Exhibit 19 that your next chronological note is November 1988, the Budapest appeal?

A. That's correct.

10 Q. Can you tell us about that one?

A. This was another meeting of the heads of sport organizations of socialist countries, in particular the ministers of those countries, and they produced another "Appeal Statement", Mr. Commissioner.

15 Again, I think the use of the term is in a sense to understand it as an open declaration and an urging that the world of sport and governments listen to the statement, the appeal, and do something about it. It is an encouragement to act.

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This appeal statement was really made evident and released in and around the time of the Moscow meeting and had a fairly dramatic effect because the appeal statement now took an even stronger stand in calling upon the International Olympic Committee to provide leadership and to provide leadership by establishing an international anti-doping control or doping control commission. Remembering that currently there was a medical commission of the IOC but the doping, the anti-doping group was a subcommittee and did not have responsibility to establish any kind of a program or campaign, but rather to establish procedures for the labs and the banned list.

This went further and said that there should now be a full doping control commission and that in fact a commission should conduct itself should form, find a mechanism for conducting testing of athletes on a world-wide basis and in particular testing on an out-of-competition basis. And for the socialist ministers to ask the IOC to take this step I think was seen to be a dramatic development and effectively indicating that at least one grouping of countries was prepared to, if you will, give a signal for strong leadership and give up a good part of what we will call the independence of their sport members from their countries when they were

competing internationally or even when they were training within their countries. They were, I think, suggesting that they were prepared to work with a higher level of authority, if you will, under the guidance of the IOC. At the same time, of course, expecting that the IOC would establish something that was technically capable and objective, but I think it had the credibility to that point to do that.

So that appeal statement was circulated in the days just before the Moscow meeting in November 21-25 and became the basis in fact for inclusion in some of the resolutions that were in the UNESCO meeting in Moscow. Which brings us to that meeting in November 21 to 25 in Moscow was the second only in history meeting of all the Ministers of Sport and Physical Education of the UNESCO membership of which there are I think bordering on around 130 or so countries, but 117 countries attended with their Ministers of Sport and Physical Education. And Canada by its original design and in co-operation and in conjunction with the IOC through recommendation from this first conference was intending to bring the world charter to the UNESCO meetings in Moscow.

I should note and I forgot to mention another important development and that is when the international or world charter was advanced out of the

world conference in Ottawa, it was suggested there that when it came to the IOC both at our urging and their urging that it be retitled to become International Olympic Anti-doping Charter which was to say that therefore the 5 Olympic movement would be seeing it, if you will, as theirs. And that was another step in the path of having the IOC I think assume a stronger form of leadership which we were not only supportive of had been encouraging all along.

10 So, the charter wasn't officially accepted and endorsed in Seoul as International Olympic Anti-doping Charter to the agreement of all concerned.

So, this charter was forwarded to all, by Canada, to all the countries who are members of the 15 UNESCO with a covering note seeking their support and that it would be on the agenda of the UNESCO meeting. And the directorate of UNESCO, the Secretary General, resident in Paris, produced or prepared a background note tabling on our behalf or through UNESCO Secretariat, I guess, a resolution calling for the UNESCO membership to accept and 20 support the anti-doping charter.

That resolution was therefore available and on the floor of the UNESCO meetings on arrival. Since the UNESCO is a meeting of governments and is attended by 25 officials and Ministers of Governments in the sport area,

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the document could not be submitted by the IOC because the IOC is not a member government. So, it had to be submitted by Canada. Mr. Samaranch was invited to provide some opening remarks at the opening of the conference in which he chose to talk about the anti-doping fight and underlined the concern for a world-wide initiative. And at that point indicating the IOC support of the charter and its indication that it was prepared to take leadership to help implement it further.

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I think it's fair to say that of the 100, every single country talked in the opening part of the conference about the development of sport and phys. ed. in their country and what they saw to be the major issues internationally. And it's fair to say that everyone, as far as we could tell, of those countries talked at one point or another about the concern for doping in sport and the majority of them by virtue of the UNESCO Secretariat doing the count said some 67 noted in particular the work of the world conference, the advancements by Canada, and the world charter which they were supporting.

During the time of the conference, as well this Budapest appeal was being circulated and began to be incorporated into various stated resolutions.

25

The process of this conference is such

that there is just a huge myriad of resolutions that are submitted by various countries and all sorts of topics and there is always a drafting group struck which whose purpose it to gather together all these various 5 resolutions and put them into some manageable hole and boil them down into a few brief descriptive and comprehensive ones and then to test whether or not those still met the original spirit and intent of all those countries that had submitted those various resolutions.

10 Such work carries on in the corridors throughout the five days of the conference.

And during this conference, our resolution that Canada had submitted that dealt with anti-doping in general and in particular the charter, we 15 of course knew that there would be many other resolutions dealing with anti-doping in general. And so the working group approached us and asked us to work with them to help construct the resolution and to make sure that the original spirit regarding the charter was maintained which we agreed to do. And the Soviet Union in particular 20 approached us, Mr. Gramov and Mr. Gakrilin, approached us to ask if we would agree to, if you will, co-sponsor the final resolution in conjunction with them and to include the salient point from the Budapest appeal which was to call upon the IOC to exhibit strong leadership and to 25

establish this International Doping Control Commission. Which we readily agreed to given all the obvious factors that, A, it was a good idea; and B, that the Soviet Union, as the host of the conference and the head of the Praesideum at that point in time, was asking us, was I think a request that we felt quite agreeable to moving ahead on. It was in fact the only resolution of the many that were tabled that the Soviet Union chose to sponsor or co-sponsor.

10 So, in the final stages, a resolution was finally, in the final day, approved by UNESCO. And it perhaps is appropriate to note that resolution now, Mr. Armstrong.

15 MR. ARMSTRONG: Yes, Mr. Commissioner, it follows in your book immediately after Exhibit 22, the annexes to the charter. And it's entitled Second International Conference of Ministers and Senior Officials Responsible for Physical Education and Sport, Moscow, 21-25 November, 1988, Draft Final Report.

20 MR. REGISTRAR: Exhibit 23.

MR. ARMSTRONG: Exhibit 23, please
THE COMMISSIONER: Yes.

MR. ARMSTRONG: Thank you.

5 --- EXHIBIT NO. 23: Document entitled "Second
 International Conference of
 Ministers and Senior Officials
 Responsible for Physical Education
 and Sport"

10 MR. ARMSTRONG:

Q. And there were how many countries in
attendance at this UNESCO meeting?

15 A. 117.

Q. Do you recall or do you know what the
vote was on the resolution?

20 A. It was unanimous.

Q. And I take it from what you have told
me earlier that the charter as approved by the Ottawa
conference remains as it were in tact today, so presumably
this resolution approved and adopted the Ottawa charter as
we have it in Exhibit 21?

A. That's correct. The charter, with the
exception that the list of annexes has now been reshaped
somewhat but all --

25 Q. But the general principles and so on
that are contained in this document, 117 countries of the
world have accepted it?

A. Yes. The choice of words here is important whether we use endorse, accept, support because of the following two factors: one, I think the international working group and Canada and the countries who attended the Ottawa conference were clearly casting their lot behind the IOC to take leadership. Hence the naming of the charter as an International Olympic Anti-doping Charter. There was a major consideration therefore as to whether or not this would become an UNESCO charter. UNESCO itself does have charters. They have a charter on physical education, for instance. However, the belief was that it could not exist both as an Olympic Anti-doping Charter and UNESCO charter. UNESCO, it was our information, had required the word "Olympic" to be removed and would have wanted to have taken some lead responsibility for next steps on the charter. And we did not have the confidence that the UNESCO was the appropriate agency to take that lead. And hence, it was clear from the procedures and authorities of UNESCO that UNESCO as an agency and its membership could not endorse a charter that was not their own charter.

So, we had to find the right words that allowed UNESCO and all its members to be supportive of it and to reflect the fact that by being supportive they were saying that when the charter came to their door, that they

would then formally endorse it but that the action of
approving the resolution was not in and of itself an
endorsement because they could not endorse the charter
that was not theirs. Hence, you will not find a word in
5 here that says "endorse" or even "adopt". And in fact, as
you can probably imagine since we are dealing with six
official languages in Moscow, the extensive discussions on
one sentence and almost that phrase went on for some days.
And in the end, you see the sentence under 7A, I guess it
10 is, where it says under page 2, recommends that member
states, and I quote "In support of the principles of THE
International Olympic Anti-doping Charter consider the
text of the charter and also the desirability of
recognizing it and adopting it in the future as the basis
15 for co-ordinated action by all interested state and
voluntary organizations with the aim of establishing a
harmonious system of international doping control."

So, again the delicate wording here was
to consider the text and the desirability of recognizing
20 it rather than recognizing and adopting it.

Q. I understand that and that's quite
useful, just let me just clarify this. Taking the
language that you have just read and the reference to the
international Olympic Anti-doping Charter that in effect
25 is this document and I guess, in particular, document

number two, in Exhibit 21 , described as International Anti-doping Charter?

A. That's correct. The other points I would note in this these pages I have attached is that there was as there is usually is in these world conferences a opening declaration of several points. We have extracted simply one point relating to this subject area that of doping. And I have noted on first page, 5.7. And I think again some of main principles here are now evident and that is that the declaration by 117 countries was to recommend that the campaign against doping in sports should be organized by co-ordinating the action of public authorities.

THE COMMISSIONER: I am sorry, what page are you reading from?

THE WITNESS: I am sorry, it's not numbered. It's the page right after the title page.

THE COMMISSIONER: I have it.

THE WITNESS: It says Moscow Declaration at the top of it.

THE COMMISSIONER: Yes, thank you.

THE WITNESS: I am just reading the first sentence, sir.

THE COMMISSIONER: Thank you.

THE WITNESS: By co-ordinating the action

of public authorities and voluntary sports organizations so the acceptance now of a joint, working together, if you will, of governments and sport. The word "public authorities" is to allude to governments, if you will. 5 And that it should be based on the International Olympic Charter against doping in sport, et cetera, et cetera.

After that, the rest of the resolution is significant in and of the point I have made on 7A with respect to the charter. And the other important point, given the Budapest appeal and the leadership of the IOC 10 that we all desire would be to note 7E which is at the bottom of page 2. And I quote, "It recommends that member states, meaning 117 countries, respond favorably to the intention of the International Olympic Committee to support the proposal made by the Directors of sport 15 organizations of the socialist countries at the conference held in Budapest in November 1988 concerning the establishment by the IOC of a permanent International Commission on Doping Control."

20 So, that was the second important, I think, part of this resolution that I would note.

So, I guess in a way that on the two major initiatives that we see at play right now that the die was cast there. The IOC at that point, of course, had 25 not responded to this request but there was now

considerable momentum by virtue of the socialist ministers
and by virtue of 117 nations representing the various
continents of the world calling upon action of endorsement
and support both for the charter and for the IOC to
5 establish a doping, a permanent doping commission. And
that, in fact, in the subsequent period, some two weeks
later on December 4 through 9, or 5 through 9, in Vienna,
there was --

10 MR. ARMSTRONG: Perhaps I could just stop
you there. We are going to Vienna and I see it's after
one o'clock and we are coming back at two

THE COMMISSIONER: We can't go to Vienna and
be back in one hour.

MR. ARMSTRONG: We will try.

15 THE COMMISSIONER: We will adjourn until two
o'clock.

--- Whereupon hearing adjourned until 2:00 p.m.

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--- Proceedings resumed pursuant to luncheon adjournment

THE COMMISSIONER: Mr. Armstrong?

MR. ARMSTRONG: Thank you Mr. Commissioner.

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MR. ARMSTRONG:

Q. And Mr. Makosky, we were, I think, reaching a home stretch so far as Exhibit 19 is concerned and we were at the bottom of page 5 and we decided we couldn't go to Vienna and back in an hour but maybe we can, after lunch, get back there even a little quicker than an hour.

What transpired in Vienna in late December, or early December, rather?

A. Thank you. Mr. Commissioner, there

were a number of, I think, significant developments at the time of Vienna.

First of all, our international working group used the occasion of those meetings knowing that a number of our members would be there to have a meeting of the working group.

THE COMMISSIONER: What date was that now?

THE WITNESS: Our meeting was on December 4th.

THE COMMISSIONER: Thank you.

THE WITNESS: And on the agenda for that meeting was a proposed strategy to take the charter to the next stage. The strategy had really two tracks to it.

One was to gain endorsement and support, if you will, in the sport community, the voluntary sport community, and the understanding by the end of the discussion is that the IOC would lead that and indeed take the charter through various bilateral discussions to International Federation meetings and attempt to have the International Federations, if you will, endorse the charter and be part of the next steps regarding its' implementation.

Secondly, what might be called the country to country track, or particularly, the focus on governments in those countries, was delegated to Canada to lead a strategy whereby we would undertake to have a number of countries, their governments in support, the ministers or whatever, to endorse the charter.

Our objective, I think in this strategy in the next several months, will be to address probably the leading nations in sports since the timetable would call, I think, not for attempting to address all 160 nations that are members of the IOC but, rather, an appropriate selected number. In particular, the top nations in sport.

We contemplate that somewhere in the

neighbourhood of say the top 25 nations from the Summer Olympics and the top 15 from the Winter Olympics would probably bring us to speak to virtually all of the top sporting nations in the world and the ones that we believe are primarily (a) are involved with the problem, have the problem in some form in their countries and are concerned about it.

5 And we would have proposed to do that by going first to the 28 nations who were at the Ottawa Conference since clearly they have some psychological commitment to this charter, having endorsed it as a model.

10 THE COMMISSIONER: What's left to be done, if the charter was approval in principal in Moscow, or was it?

15 THE WITNESS: It was not -- again, the wording here which suggests that since it was not a UNESCO charter, that 117 countries said tha tthey were prepared to approve it, as you would say, when it came to them individually. And they were saying come and see us; we're prepared to look it.

20 Now, we're going, sort of, country by country and we would start with the 28 nations that were in Ottawa.

At the same time, the IOC would undertake to deal with the International Federations and all of their

National Olympic Committees in order to get their support.

So, that strategy was discussed and worked out and we are now, in the next several months, embarking on it.

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The second element on our agenda of this international working group ---

MR. ARMSTRONG:

Q. Can I just stop you there? So far as the International Federations are concerned, it is the International Olympic Committee who are going to be visiting each of those to persuade each of those to support the charter which will involve accepting the IOC's leadership?

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A. That's correct.

Q. All right. And who from the IOC would be doing that? Is there a working group of the IOC or...

20

A. Clearly, the lead on it, the case caller would be the IOC vice-president, Prince de Merode who is the head of the Medical Commission. Who else in their staff or executive board they might use, I'm not entirely sure.

Q. And has that process with the International Federations begun yet?

25

A. We don't have a specific report so I'm

not exactly sure. In a general way it's begun. What meetings have been held when, or even if there have been any, given that we were just before Christmas, the Christmas period. It's now only January 12th.

5

Q. Only January, yes. Probably unlikely?

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A. Yes. It's more likely the IOC would know the executive board timetable of the various International Federation executive meetings and would tend to probably try to either meet the president privately, individually or attend their executive board meetings, would be my guess.

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The second item, if I might Mr. Armstrong, on our agenda was to deal with the next world anti-doping conference which the Soviet Union had offered to hold in the Soviet Union in September, which we did do, and we spent some time dealing with the possible agenda of that conference.

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In general terms, I think it's going to deal with, as we would understand it, the next stage, to what is likely to be on the agenda there would hopefully be what implementation of the charter actually means, country by country, and what implementation means on the international sport community side.

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So, my sense at this point, although the agenda hasn't been fine-tuned, is that we will be dealing

there with implementation about uniform approach as opposed to endorsement of an approach in principle.

Implementation and what kind of mechanisms would be needed to implement it.

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So, it's likely the IOC hopefully would make an presentation on the structure and approach of their new Doping Commission and that various countries would report hopefully on their developments in beginning to implement the charter in their country.

10

We, of course, would report on a degree to which the charter at that point would have been endorsed by whatever number of nations.

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So, we talked a general way and there are succeeding meetings intended to for the planning of this conference. The International Working Group asked Canada and the IOC to work with the Soviet organizers to help design the conference to serve, if you will, as advisors to help in the design and development and we'll be providing that contribution over succeeding months.

20

The third task was to review the scope and content of the annexes, the list to the charter I referred to earlier, and it was that meeting that produced those five -- this meeting in Vienna, that produced those five principals on out-of-competition testing that I spoke to earlier.

25

The rest of the annexes are pretty well done with the exception of the rights and responsibilities. That one we had a good discussion, I think. The group now has a sense of the scope of it and there are a couple of
5 people who have been delegated to prepare that.

The rest of the annexes are pretty well done and the IOC has accepted the responsibility to compile and print all of these annexes. Some of them represent quite considerable documents. The IOC laboratories procedures
10 is, in of itself, quite a substantial document.

So this set of documents will, when compiled, will be quite a significant amount of information to be used, I guess, as the mechanisms and tools for anti-doping campaigns in each country and, on a
15 world-wide basis, it provides all the specifications of approach, testing, penalties, et cetera, et cetera.

Q. All right. I just wanted to clarify the situation with the annexes. In Exhibit 22, what we have, as I understand it, is really a description of what
20 is to be contained in each of the annexes. Is that it?

A. That's correct.

Q. And the actual detailed formulation of the content of those annexes is what is being worked upon at the present time?

25 A. Correct.

Q. And then is there anything else that developed at your meeting in Vienna?

A. Yes. Additionally, of course, -- well, during our meeting in Vienna those were the major agenda items.

We also discussed, in that session, the various other developments that were occurring internationally and, in particular, we talked about the Council of Europe's indication that they were beginning to proceed on the possible track of changing their European anti-doping charter to a convention.

Such convention would be obligatory or, at least, the elements that were included in the convention being stated as obligatory would compel the member nations to follow certain approaches and guidelines and, if not, would be subject to whatever agreed common sanctions, if you will, would be part of the approach of a convention.

So that was an interesting development on an European convention and, in fact, there have been some tentative discussions as to whether Canada would be interested in pursuing this idea of a convention and, indeed, potentially becoming a member of it. So, that's only recently received information that we have to begin to consider and pursue.

The second item that we heard some report

upon, I forgot to mention with regard to Moscow, was this proposal of the Soviet Union and the United States Olympic Committee to enter into a joint agreement to engage in cross-testing. This proposal actually was seated at the

5

Ottawa Conference.

As it turns out, the Soviet Union and United States delegates were seated next to each other throughout the Ottawa Conference and Dr. Don Catlin has told me that they found occasion at the conference, progressed to talk about what their two countries might do, and had enough mutual interest to decide to proceed on the idea of a potential bilateral agreement.

10

Discussion after that was raised to the level of the sort of president of the USOC to having discussions with Marot Gramov of the Soviet Union, who is the head of the sport committee and the sport minister, and discussions proceeded and were concluded in a, I'll call it, in a general way with the announcement literally on, I think it was the day before or the day of starting the UNESCO Conference, where the Soviet Union and the U.S.A. had a joint press conference in Moscow which had, as you can imagine, a fairly strong impact on the UNESCO Conference in which they stated they had reached agreement in principal in terms of a draft agreement to do what was called cross-testing. The details of which, of course,

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have not been worked out. Those are the subject of subsequent discussions.

5 But, in principal, what it was to say is that an appropriate testing group from one country, let's say the Soviet Union, could arrive in the United States and be allowed entry to test athletes of the United States on some kind of short notice.

10 I use that phrase because the details have been worked out and what kind of notice would be appropriate and how that would be managed to assure confidentiality is a matter for those two countries to work out and vice versa.

15 I was just going to say, that was announced verbally in Moscow and a further kind of description of it was given by Dr. Catlin in our meetings in Vienna and he, at that time, showed us the draft agreement.

Q. All right. This might be a convenient point, it may throw off our Exhibit numbering a little bit, but that's neither here nor there because you and I 20 are almost finished.

Mr. Commissioner, Mr. Proulx indeed has had a very useful and lengthy meeting with Dr. Catlin whom we expect we'll be hearing from later on, at the appropriate time in this Commission, but as a result of that meeting, 25 Dr. Catlin provided to us a memorandum from the Executive

Director of the United States Olympic Committee to the
USOC Executive Board members describing this agreement
between the USSR and the United States Olympic Committees
together with the U.S. Olympic Committee news release,
5 which sets out the basic text of the agreement, and since
we're at that stage, I would ask that we mark this
document that I've just described as our next exhibit.

THE COMMISSIONER: Is it finalized or still
in draft form?

10 MR. ARMSTRONG: Well, I think it's, as Mr.
Makosky who is quite familiar with this, has indicated
that the details of the program are still to be worked out
but this is public information, the United States, because
the memorandum attaches...

15 THE COMMISSIONER: The release.

MR. ARMSTRONG: A press release saying for
immediate release.

THE COMMISSIONER: Thank you.

20 --- EXHIBIT NO. 24: Memorandum from the Executive
Director of the United States Olympic Committee

THE WITNESS: It is an agreement in
principal.

25 THE COMMISSIONER: You've seen this

document, have you?

THE WITNESS: Yes. It is an agreement in principal and both countries indicated that the next itself was for them to take this document to their, 5 "higher authorities," for final approval, recognizing that the president of the USOC had, in fact, to take this to his membership and executive board to receive final ratification and, similarly, in the Soviet Union.

MR. ARMSTRONG: It might be useful just to 10 pause here for a moment, Mr. Commissioner, and note in the memorandum of November the 29th, there's reference to the meeting of the four person delegation of the U.S. composed of Don Catlin, Dr. Don Catlin, Dr. Ralph Hale, Edwin Moses, and the executive director, Baaron Pittenger, to 15 the Soviet Union in November.

And then it refers, in the second paragraph;

"There seems to be a general consensus 20 that doping remains a major problem at international sport, both from an ethical standpoint and as a health consideration for athletes."

I believe the USOC should take pride in the role that it's taking to deal with the situation and I believe equally that the 25 agreement with the USSR, NOC..."

That's the USSR National Olympic Committee;
"....still, subject to Executive Board
approval represents a significant
development on a world-wide basis."

5

And then I could draw your attention to
the paragraph at the bottom of the page which says;
"The agreement..."
referring to the agreement reached between
the Soviet Union and the U.S.A....

10

"....speaks for itself. In broad terms,
it commits both NOC's..."

That's National Olympic Committees....

"....to a mutual effort through both
their own programs and a joint program
to support the efforts of the world
conference."

15

That's the world conference that Canada
hosted in June...

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"....and the IOC Medical Commission in
the battle against doping. That commitment
contemplates cross-testing, joint research,
the development of educational materials and
an effort to draw other NOC's into a
world-wide effort which will protect the
competitive positions of U.S. and Soviet

25

athletes."

I don't want to read this document in detail but if I could take you down to the middle of the next paragraph, where there is a little more specifics, Mr. Pittenger, in the memo, says;

"We agreed to test only for those drugs in which there is mutual agreement that a training advantage accrues."

And then in parenthesis;

"(The ephedrine family was discussed and eliminated). We discussed an approach to cross-testing in which the U.S. crews would test U.S. athletes under observation by the Soviet experts and vice-versa and U.S. and Soviet technicians would then work together on the analysis, thus sharing expertise and reducing the potential for suspicion to erode the program.

National team members of all sports on the Olympic program would be subject to the cross-testing procedures but with two such tests in each country per year, it is obvious that many will not be subject to testing in a given year.

Cross-testing, incidentally, may occur

at bilateral competitions or at multi-sport competitions wher both the U.S. and USSR are participants.

5 A joint (8 person) Commission would schedule testing on a mutually agreed to basis."

And you'll see in the next document, the news release, there is the basic text of the agreement and in the second page of the news release, it says in the 10 middle paragraph that the executive board of the USOC will be meeting on February 17 in Portland, Oregon to radify the agreement.

I assume, that the sense in United States, from your discussions with Dr. Catlin, lead you to 15 conclude that this will be radified by the USOC executive board?

A. I would think so. I think it's not -- will, however, be radified not without difficulty in terms of its member sports who will ask, I think, a lot of 20 questions and it will presumably have a fair bit of investigation but I think the USOC is expecting to have it radified in the report we received from the USOC.

Q. All right. Now, there was one other matter in the chronology of events that you and I were 25 going to deal with. I don't want you to press you ahead,

if I'm jumping ahead, but we were going to talk about, very briefly, and mark as an exhibit the model for National Anti-Doping Program.

Are you and I on the same wave-length still?

5

A. Yes.

Q. If I don't say myself we've not been doing too badly?

A. Yes.

Q. And is it appropriate if we go to that 10 for a moment?

A. Yes.

--- EXHIBIT NO. 25: Document entitled Model for a
National Anti-doping Program

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MR. ARMSTRONG: Mr. Commissioner, this document following immediately upon the UNESCO resolution, in your book, and is headed a model for a National Anti-Doping Program which we'll mark as Exhibit 25.

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And Ms. Hoffman, in her evidence, as one of the individuals who has had a great deal to do with this document in Canada, is going to be to be testifying to it, but can you tell us as to what its significance is at the international scene?

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A. Yes. A somewhat less reduced version of

this was presented in brief overview at the Ottawa Conference and it was, I think, received with enough enthusiasm, it was considered that an abbreviated version should be contained as an annex to the charter.

5

It was also subsequently considered by the international working group that, in fact, a more detailed version which you have before you, is still in a drafting stage, should be produced as a kind of companion guide to the charter.

10

It, in fact, outlines the elements of a national anti-doping program which are the elements, the international working group and others concerned with the charter, would hope that the countries of the world in sport would adopt and implement in their countries.

15

So, it outlines those elements in detail. I think it will be used in an useful guide to accompany the charter and it finds its way around the world.

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And this model that you have before you is in the second, third or fourth draft, will be refined probably in the succeeding weeks and go back to the international working group for approval and then will be printed as a companion guide to the annexes and the charter.

25

Q. Fine. I want to go back and just pick up with one matter that we dealt with or that you

mentioned in your evidence this morning and you now have confirmed, that is the situation with the International Weightlifting Federation, and the promulgated rule or resolution that should a member -- should a person, an athlete test positively, that the national Federation of whom that individual is a member or indirectly a member, will be, itself, suspended from the International Federation. Were you able to find out about that?

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A. Yes, that's correct. Again, there was two points. I underscore that, at this point, it talks about the athlete being tested positive, I believe, at international events, not within a country.

10

Q. I see?

15

A. And, secondly, the -- yes, as you've stated is correct, if such athlete is found positive, the international -- the national federation of that country of which the athlete is a member would be suspended for a period, on first occasion, the federation would be suspended for one year and then the penalty escalates after that on repeated offenses.

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And secondly, that on that occasion the International Federation would expect the submission of a name or names of those individuals who had provided the drug and/or counselled, aided and abetted the use of that drug and if a name or more were not forthcoming, the

International Federation would indicate a suspension of
that coach.

Clearly, their authority does not govern the
actions of that coach within the country but they would
say, in effect, that that coach could not accompany a team
of that country, or any other sport, if you will,
internationally with regard to their sport for the same
period of suspension.

And that both of those regulations, if you
will, of the International Weightlifting Federation were
ratified and approved in December, in Jakarta, at an
assembly meeting of all the members of the IWF, the
International Weightlifting Federation.

Q. Now, Mr. Makosky, I want to take you to
a final document entitled -- sorry?

A. Could I just enter one other
observation, Mr. Armstrong, just to conclude the Vienna
meeting. And that is to note that I've made the points
about what we've talked about in the international working
group.

But additionally, in the days that followed,
when -- well, government representatives had returned
because the meetings held there in Vienna were meetings of
the Olympic family of the IOC and what's called ANOC, the
Association of National Olympic Committees, most of whom

in the world were there.

And, at those meetings, doping in sport was a very high agenda item and it's my information that the ANOC and the National Olympic Committees took the step at 5 that meeting of supporting and endorsing a world charter and that the IOC urged all of its National Olympic Committee members to support and implement the charter.

Secondly, it was at that meeting that the IOC president announced that the IOC partly, I suppose in 10 response to the appeal by Socialist Ministers but clearly on its own regard and its own initiative, had announced it was now forming an Anti-Doping Commission which, you recall, I spoke of with regard to that other topic in Moscow but that was a recommendation to the IOC that they 15 had not responded to. It was this meeting in Vienna when the IOC announced they would now be forming an Anti-Doping Commission and that they had instructed the formation of it and to proceed to establish a testing mechanism including testing of out-of-competition, on 20 out-of-competition basis.

There was also some suggestion, this is now in the realm of ideas as to how this might be implemented, of a so-called flying lab. That item presumably, there will be more information or insight on from others who 25 have, such as Robert Dugal, who would have information.

Finally, of note, during this same meeting,
I think we referred to it yesterday, the German Democratic
Republic indicated that they were interested in joining
the USR/USSR cross-testing control agreement, the one that
we've just submitted as an exhibit.

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The extent of that interest, the nature of
it, and the timetable of it, we don't have that
information. It was an expression of interest and it was,
of course, immediately, as we understand it, warmly
10 received by both the USOC, the Olympic States Committee
and the Soviet Union.

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I just wanted to note those other
significant actions that occurred in those Vienna
meetings.

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Q. Can I just ask you this question about
East Germany? You mentioned this morning, and I'm sorry I
forget just at what point in the chronology I asked for
your comment, but it was, I think, prior to the Ottawa
Conference and you indicated, I believe, that East Germany
20 was tentative in its approach to going down this road that
you have described for us and that you've been down, at
least, partway.

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Are they, by virtue of what you've just
said, still to be described as tentative in their approach
and commitment to the charter and the implementation of

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the charter?

A. I think it's fair to say that the situation has changed fairly significantly. I think there is still a degree of tentativeness but the GDR agreed to attend the World Conference, were a contributing member there. They are a member of the International Working Group and have contributed to the various discussions.

They have supported the intent of the charter. They were a supporter of it in Moscow. They added their name to the endorsing countries, if you will, or supporting countries and presumably, as a National Olympic Committee in the meetings in Vienna, they further supported that this IOC Anti-Doping Charter or Olympic Anti-Doping Charter was a charter that their National Olympic Committee, which is part of their same sport federation, would indeed embrace it, as intended.

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The fact is as well of course they are indicating they are interested in joining this bilateral agreement between the Soviet Union and USA, and I think is quite a significant step and indicated that the GDR is becoming -- I don't know what adjective to put here -- certainly less tentative and more involved, and I think in a reasonably enthusiastically way.

The measure of that, as one can say the proof will be in the pudding as yet to be seen in the months and years ahead. As it is for many countries who have expressed their interest in being part of this, but the full testing of that interest will be seen in months and years ahead as you begin to deal with some of these mechanisms.

Q. Of the major sporting nations, and you may say to me, well what do you mean by the major sporting nations, but let's assume that you and I have an idea of what I am saying. If the major sporting nations in the eastern block, apart from the GDR, East Germany, are there any others that could be described as either in the tentative category or what you now describe the GDR as being in the less tentative category?

A. I think that's a matter of speculation in part. There is more unknowns than there is known speculation, than there is known tentativeness, I think.

For instance, where there is mechanisms such as the Council of Europe, where a number of countries have signed onto an approach, you could look at that array of 21 countries and make some assumptions, if you will, about their degree of aggressiveness and enthusiasm for an anti-doping campaign.

Where there are no other mechanisms or common agreements where other countries have signed on, you would have to ask the question, I guess, can you assess their degree of enthusiasm and aggressiveness, and there aren't a lot of ready and evident parameters or means of making that assessment.

Clearly, those countries who are -- present in Ottawa and present of Moscow, one would like to draw the conclusion that they are going to be willing and enthusiastic endorsers and implementers of the charter, but it is an unknown.

Officials of such a country in a conference might agree in principle to a next step and the degree of timing and the enthusiasm of the implementation of that step might be a different matter and will be a matter to see in the future, I guess.

So for those countries that are not part of existing agreements, existing mechanisms, one would have to ask the question, and can only conclude that it's an

unknown, rather than a tentative character. We have no -- at this point in time, I could not give you a run through the countries with some kind of reaction as to whether I think they are wildly enthusiastic or considerably tentative.

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Our sense is that the pace and the change -- the pace of movement on this question and the general agreement in all parts of the world to address it has changed dramatically and positively, and that we are not aware of at this point in time a major supporting nation who have not -- who have not indicated some level of enthusiasm or, perhaps more importantly, who have indicated some considerable concern. We have no evidence of a major sporting nation that have done that.

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Q. All right. Again being specific, and using your word enthusiasm, does the Soviet Union fit into the enthusiastic category, so far as you are aware?

A. By virtue of the senior leaders in sport and their statements and actions, I would say yes.

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Q. And what about the United States?

A. By virtue of the senior leaders of the United States Olympic Committee, I would say yes.

25

Q. Now, one final document that you have been good enough to provide us with is the document headed "Federal Prospective on the Major Challenges and

Anti-Doping to be Addressed Internationally in the Future", and that should follow along in your book?

A. Yes.

Q. If we could have that marked as Exhibit
5 26.

THE COMMISSIONER: 26.

10 ---- EXHIBIT NO. 26: Document headed: Federal Perspective on the Major Challenges and Anti-Doping to be Addressed Internationally in the Future.

MR. ARMSTRONG:

15 Q. All right. Now, again, Mr. Makosky, at our request in this document you have addressed the future as it were from a perspective of a federal government, while again I know you don't want to stay any longer than you have to, but could you take a moment or two and give us the benefit of your views as to what the future holds 20 from the point of view of the Federal Government, what it should be, doing what it ought to be doing, what it hopes to do?

A. Okay, thank you.

25 Mr. Commissioner, I think it would be fair to begin this by in a sense returning to the stage we were

at some three years ago when the Canadian Government became more involved internationally and made some assumptions about its activities and actions, and ask where do we stand now in the test of those assumptions some three years later.

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I think, by and large, our assumptions about our involvement still hold, which is to say that we believe the issue to be so significantly international that countries and governments must act internationally, as well as domestically; that governments of nations have a concern for this area and have rolls to play; that we as one government, at least, prefer that for the significant part of the anti-doping campaign internationally, notwithstanding the necessary role of governments, that the significant part of such a campaign we would prefer to have the international sport community managed both internationally and domestically. Again, outside of those roles we think to be necessary to governments.

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Our assumption that the IOC be the leader in this international sport anti-doping campaign is still assumption we hold, that the goal of this campaign ultimately should be, as one says, a level playing field, a common uniform consistent approach across sports, across countries and across games.

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Secondly, I think we have had our expression

validated that governments and the sport community must work together on this matter, each in their own way, both separately, independently and together from time to time. I think as well that we have seen considerable progress over the last three years, particularly over the last year, and then dramatically over the last six months, and we have been pleased to be part of that. But I think it's also fair to say there is much to do.

5

I think it's our sense that we are at an extremely critical point where we have the opportunity to move ahead in dramatic fashion internationally with real action, with the lasting effect and ultimately uniform co-ordinated approach, but there is also the possibility, as can happen in these endeavours given the complexities of the global scene and all the politics and different authorities at different organizations, that we can get stalemated, that the system internationally will be satisfied with the evidence of apparent action, if you will, of a symbolic first steps, first steps with promise, but won't complete the actions to the next stage.

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So, as we look out as one agency, we have made a number of observations about what we think to be part of -- and again this is a federal and a subjective perspective, it is not a product of the international working group, it is purely fitness and amateur sports

view, as you said, Mr. Armstrong, at some urging or
request from yourself. Our view on what we think to be
the major challenges that all the countries in
international sport community would be wise to address if
5 we are going to slip -- if we are going to move into the
next stage and not slip into some kind of stalemate.

Now, I indicated in here and I would like to
take you briefly through them. First of all, is the --
one of the most questions we began this particular session
10 with, and that is the question of world leadership in the
sport community. We believe it is and must be with the
IOC, and it really now is up to the IOC and, as I have
indicated here, or as we have indicated here, it's
important for the IOC to maintain its recent leadership
15 momentum and pace, which I think has been considerable and
they not be content with a symbolic victory.

Secondly, I think there will be a question
of whether there is or will be a should be a core group of
leading sport nations from different continents that form
20 some kind of a pact to work together. An initial
indication, of course, would be such a pact between the
Soviet Union, the United States and the GDR. I think if
that moved into a phase that demonstrated between those
countries in sport terms openness, a consistency and a
25 mutual verification of testing results, that would answer

some of the perceptions that anti-doping technology is used by some countries to manage their athletes in the doping approach.

Secondly is the question of the role and support of the international sport federation, I think is the major question on the agenda, and you, Mr. Commissioner, have noted the concern about how the world of sport will deal with the IF's in relationship to the IOC, and there are various means that this might be help.

The IOC might select in an individual IF to develop a model program, to develop a relationship with that international federation that could then be a prototype for its relationship with the other international federations.

Or, as is suggested here, the IOC might begin to request or require that international federations submit quadrennial anti-doping programs against a given standard, much in a way like we in Canada require that sport bodies submit to us plans on an annual and quadrennial basis for their anti-doping programs.

How far that would go is a question mark. Obviously it could be connected with a condition of membership or access to the Olympic games, the ultimate trump card, I guess, the IOC possesses. In order to address the question of the international federations and

their willing linkage to all of this, perhaps there an opportunity now for the National Olympic Committees, since the IOC is a leader those national committees and members of IOC, every sporting nation has one for them to work with the national sport federations in their countries to put pressure on the IOC and the IF's, in particular on the IF's so they engage in a common consistent approach.

5 Number three here notes the role of support of governments. I think it now -- there has been enough momentum in the last couple of years to suggest that 10 governments do have a role to play along in the terms that we have talked about.

So the question becomes will governments develop common legislation to govern the classification of banned drugs on the IOC list to govern trafficking and elicit or improper prescribing. Will governments fulfill their roles as outlined in the world charter. It is indicated there in detail. Will governments in the sport community agree on a joint approach, notwithstanding the fact that the sport community and many governments in the world have always been somewhat hesitant about joining together too closely in order to maintain separation of the sport community from the State, which I think is an underlying principle we have stated we support in principle.

Will the governments use their bilateral and multi-lateral relationships, which Canada has a few, in order to deal with such questions as trafficking and common advocacy.

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An example here would be in the Scandinavian group. Norway once again is taking the lead in attempting to frame out a common agreement amongst the Norwegian, the Scandinavian countries, Nordic countries in order to deal with questions of cross border trafficking, common laws common controls, etcetera, and will governments themselves urge the IOC and IF's to agree on a common and joint approach.

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Number four on page 2 indicates that question about the responsibilities and penalties for the so-called immediate support circle of athlete. Much has been said and written and attended to with regard to penalties in testing of and penalties for the athlete, but not a lot of work has been done with regard to others involved in the doping problem in countries throughout the world.

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Most, if not all, agencies, including Canada and the IOC, have stated that they consider equally if not more reprehensible the actions of such individuals who might support or counsel or coach or aid and abet athletes in the taking of drugs, and have indicated that the

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penalties in general terms will be equal -- should at least be equal to those allocated to the athlete.

So this is not an easy problem however.

What will be the approach to finding out, to dealing with, 5 and finding out who are those in the support circles, so the question of an investigative process to reveal them.

An example is the method -- I indicated the International Weightlifting Federation without indicating a pro or con for it, it is suggestive of some of the thinking that is 10 being done internationally. Will these professions, i.e. such as things as the coding of the doctor, develop a code of conduct which they themselves will use to manage their peer actions, that they will begin, if you will, to development a common sense of ethics and a policing on some levels, if not literally, at least morally amongst 15 their peers. And clearly the question of penalty should be different against those who use and those who supply or council.

The athletes role themselves. What will the 20 athletes say and do. Many have said from time to time that the athletes themselves, with respect to many of the major issues affecting sport, if given the wherewithall and the opportunity might themselves and could themselves evolve significant and appropriate solution.

So the question is will an international

athlete base movement evolve which might be based on integrity and fair play and peer group pressure and self policing, is that an opportunity.

Will the athletes develop an international anti-doping -- an international anti-doping role model campaign. In fact, the IOC athletes commission talked about and explored this and suggested this in Vienna. Mr. Ken Read, I am sure, will speak to this question as he is a member of that IOC athletes commission that looked at that question in Vienna.

Will athletes, given the mistrust between east and western block nations on this question, would the athletes build their own bridges, their own communication links to deal with this question to help build trust and encourage peer exchange. We often think that such bridges are usually and can only somehow be done at a diplomatic or a political level, or at a senior official level.

I think there is a question, well, what about the athletes. Will international level atheletes eventually refuse to compete unless within "a clean games" and will, given that it is our sense, both domestically and internationally that the attempting to raise the concern amongst athletes about the health impact of drugs in sport has not received a large response and

enthusiastic response.

One of the concerns we have is that the health of the athlete is not high on the agenda of athletes themselves to take or are contemplating using it.

5 The question is, is there a way to raise that item on the agenda and will it happen.

Number six is out-of-competition testing and reporting of results. What will be the model for the proposed IOC out-of-competition testing commission? I think perhaps the most significant, one of the most significant and dramatic suggestions and indications in recent months, will a commission achieve an effective approach with regard to short notice testing given logistics, whatever are the requirements.

10 Will testing move from a purely random approach to a selective approach, as I spoke about earlier on the out-of-competition testing principles that is in annex 5 to the Charter. Will testing be without notice; will an approach be found to ensure reporting of all test results to a central point and a follow up verification of penalties.

15 Again, as the principles in the annex suggests, at this point those are not regulations, they have not been approved. We would hope they would be part 20 of the IOCs anti-doping commission and part of the IOCs

requirements for it's labs, but that is yet to be determined.

The top of page 3, number seven asks a question about consistent penalties and a clear and co-ordinated appeal process. Different countries, different sports, different agencies within countries have different penalties and different appeal processes. It is, in fairness, a confusing and complex route for various people in the sport community to attempt to work through and for athletes to follow clearly enough, and I think it is important that the penalties be harmonized and the appeal process be clarified and be made easier in terms of its access to protect due process and athletes rights.

The question of the spread and speed of the problem the capacity to keep up. It is often said in media reporting that the technicians and the doctors and the research scientists who were on the wrong and immoral side of this question are ahead of the game of detection of the labs.

We are not convinced that that is the case. But clearly the speed of the problem or the spread of the problem in terms of new drugs coming into the banned classification and being used continues. So, there are some considerations that need to be addressed in that area.

Clearly whether or not, as potentially has happened already, given the size of this endeavour and the amount of quantity of these drugs and trafficking, whether or not there will be criminal elements involved.

5

Will the trend of masking agents and what are alleged to be clandestine laboratories, will that be addressed and how will the control technology keep pace.

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What will the IOC do about the question of the lack of IOC accredited laboratories in major regions and continents. As I said yesterday, sir, large parts of the world, major continents do not have IOC labs currently.

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By way of example, the commonwealth games that will be held in 1990 in New Zealand at this point, the information so far is that there has not been enough progress to establish a lab because it takes some considerable effort and technology and the IOC has to accredit them, it may not be done in time to have laboratories in New Zealand and therefore the results on some kind of daily basis will need to be transported to some distant point. Potentially North America has been talked about, the United States or Canada.

20

So that is a concern. How will we address what is a considerable problem and that is the large and increasing costs of anti-doping campaigns. As you will

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hear tomorrow in general terms in this country a single urine test to be processed through a lab costs in the neighbourhood of \$200 to \$300 depending upon the scale of the numbers of tests and the kind of financing it takes to 5 mount of equipment.

But in general terms that seems to be about the level internationally. If you take \$250 and multiply it just within one country, for a number of tests that might be needed to engage in competition testing let alone 10 out-of-competition testing, multiply that by the number of sports international federations and countries around the world and you see that the numbers get very large indeed.

You then add to all of this the cost of the procedure of collecting the sample which requires 15 independent authorized individuals a controlled and security conscious area with various types of important collection mechanisms and materials that from time to time may need to be transported in order to get to where the athletes is if out-of-competition testing on short or no notice basis is going to work. We are now talking about 20 the transport, a considerable cost of all of these materials. So the costs loom large for any country including this and then one begins to look at many countries whose economic level may not be equal to the challenge. One has to ask the question about who and how 25

all of this would be paid, not the least of which is how the IOC will address their own commissions' costs.

And how will we prevent the export of this problem into new regions where it currently doesn't exist.

5 There was I think a rather emotional moment in the Ottawa conference here where a delegate from Supreme Council of Sport in Africa pointed out that it was their sense in all openness and candidness that the problem of drugs in sport had up until recently not yet in a substantial way reached that continent and was not particularly indigenous in their culture and their sports but they were beginning to experience it by virtue of their athletes who went to other countries to train or went to other countries to go to school, and they were exporting or importing the problem back into their country and he was pleading for some kind of assistance if you will by which the export of this problem could be limited if not stopped.

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Number 9 suggests or asks questions about what the goals and methods of high performance athlete preparation should be and what about the exchange of such technology among nations. And this really raises I think a number of points. First of all, as indicated here, is that we think that one of fundamental objectives of high performance sport, one of its excitements, one of its 20
25
endearing and timeless qualities is the desire by people's

of the world to push the barriers of human athletic excellence and achievement, to push them as far as they can go.

And I think that is a laudable achievement in one that people of the world enjoy participating in pursuing and enjoy and indeed marvelling at and celebrating.

And the question is whether or not this fundamental attempt will raise up as really one of the main emphasis rather than what has been become perhaps some of the other objectives of high performance sport. Cynically speaking the kind of winning at any cost. And whether indeed in order to support this endeavour whether there will be a focus on natural methods to do. Can there and will be there a greater stress on other sports sciences, the questions of nutrition and technique and training methods; which raises the problem of the advanced sporting nations and the degree to which they are the holders of much of this technology and information, with no particular criticism at all of that result, it is by virtue of their investment, their endeavours and their considerable progress.

But it does of course raise the question about the increasing gap between the top nations of sport in the world and many others. If you would look at the

olympic results in major games when you go beyond the top
ten to 20 nations realizing that we are 160 nations in
Seoul and you look at what most of those other nations did
in terms of attaining high performance, you have to ask
5 the question of whether the gap is growing which I think
most would observe, the gap is going. What does that mean
to the future of sport, is there an opportunity to share
this technology and there are many countries in the world
who are undertaking international transfer of technology
10 to other countries.

I want to say that to underscore it.

But that will be a question I think because
it is believed in part that the top ten to 20 nations are
in fact by and large the source of the problem, they are
15 the ones that is believed who are using drugs in sport the
most and therefore they are not only the exporter but they
are the possessors of the knowledge and the gap grows
whether it for technique reasons or drug reasons, one is
motivated to ask whether or not the countries at the other
20 end of the gap will increasingly feel that they need to
look to drugs in order to close the grab and somehow catch
up.

So, those are major questions I think
affecting the world sport movement in general.

25 And finally the last section on page 4 Mr.

Commissioner is somewhat more philosophical and I suppose we could all describe this in various forms but it really comes down to the fundamental values, and benefits of the sport movement and whether or not those fundamental values and benefits will indeed remain throughout time and become and stay timeless and not be compromised and be able to retain as part of the sport movement.

5 There are many major forces I think that are impacting the fabric of sport tensions, some of those are 10 healthy tensions, some of them are unhealthy tensions.

And I have listed some of them there: amateurism verses professionalism, commercialism verses the so-called commercially unsponsored effort, the nationalism verses the individual effort and acclaim, the old question about 15 whether there should be national anthems, flags shown at games, etcetera etcetera.

The individual effort, the unsupported athlete working alone verses support by sport sciences. No-one any longer believes that the athletes should be 20 working along but as the circle of support increases, and there are those countries in the world that either don't have the technology, the knowledge or the resources to provide large sport sciences and support circles, what will become of the world sport movement dealing with this 25 tension.

Will the ethical code of fair and equal competition remain as the core value in sports and I think, Mr. Commissioner, if there is a single value which is at the essence of sport, domestically and internationally it is surely this one because if there is not fair and equal competition then the very nature of sport itself, the practice of it is lost and athletes enter something else. It may be an athletic kind of endeavour but it is surely not sport as we had thought of it.

And will the fair play values be compromised by more political or nationalistic values or desires or can an approach be found to provide a co-existence. It is clearly I think understandable, healthy and to be encouraged that countries are proud of and encourage and support their national athletes and celebrate that in their country and internationally.

But at some point one raises the question whether such desires overcome the individual in some way and that the question of fair play is lost as a value.

Will the pursuit of excellence as we have stated be celebrated for its strength and glory and meaning because I think it in and of itself the pursuit of excellence is a laudable and lofty pursuit and value.

We celebrate it in almost every endeavour in

civilization, whether it be science or cultural pursuits
or economic pursuits or whatever and we do so
encouragingly and enthusiastically and I think we would
like to do so in athletics and sport and to not have it
5 succumb to this cynical interpretation of winning at any
cost.

Will sport be able to lose its innocence
because clearly the values and the nature of the world and
civilization is evolving and its various institutions and
movements must evolve to keep pace with the nature of
10 society internationally. Is it possible therefore for
sport to, some would say in some respects, is working on
principles or concepts which are no longer relevant, is it
possible for those concepts to be, if you will, reshaped
15 and retailored to bring sport into the 21st century.

In substantive form I think we would say
though, some of us who are involved in sport for some time
and within the federal government that most of the core
values and practices of sport are indeed timeless and that
indeed most of those can stay, but there is some probably
20 retailoring and reshaping that is going to be needed,
particularly when one looks for instance at the financial
support for athletes and how that is undertaken.

As I have indicated in the last point here,
25 it is the question of, given the different social systems,

different states in the world that support their athletes
in different forums, have different support models and
different economic ways, can those support models find a
way to co-exist and be given legitimacy within the world
system of sport and at olympic games and that is a
question I think that faces us all.

5 So, Mr. Commissioner, I think what I have
tried and we have tried to do and provide in this last
section is simply a subjective view point on some of the
10 major challenges and questions that among others would be
important hopefully for the international movement to
address if we are going to proceed to the next steps and
irradicate this problem.

15 Q. I want just finally to take you back to
the first page of exhibit 26. You talk there of the IOC
and its leadership role; you talk there about the role and
support of the international sport federations, and you
talk there about the role and sport of governments. Now,
I am concerned to ask you about again the implementation
20 of the charter which is clearly a very important document
and clearly a significant step on the world stage in this
area.

Q. As you have described it to us, it seems to me that in terms of implementation two things emerge, that first the IOC must accept a leadership role and it appears to be ready to do so; am I right?

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A. That's correct.

Q. Secondly, I said two, I think it's probably three at least, but secondly, the International Sporting Federations, such as the International Swimming Federation, the International Weightlifting Federation, the IAAF, all of those international federations, they must be prepared to accept the world or the IOC leadership, am I right?

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A. Yes, I think that's a fair -- yes.

15

Q. If we are ever going to have this implemented?

A. That's correct.

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Q. And then thirdly, and perhaps I am being too simplistic, but thirdly, obviously the individual nations of the world through their governments and sporting bodies must support the implementation of the charter?

A. That's correct.

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Q. And being an optimist, it seems to me from what you have said that on the government, individual nation front, you have got 28 nations in Ottawa,

representatives of those 28 nations having adopted,
unanimously supporting the charter. You then move from
there to Seoul, and from Seoul to Moscow and the UNESCO
resolution, and as carefully worded as it is, you have got
support from 117 nations for the charter, right?

5 A. Correct.

Q. So, two of the three components,
significant steps have been taken. You have got the IOC
accepting its leadership role, you have got 117 countries
10 through UNESCO at least supporting a resolution that says
they are prepared to look at this charter seriously and
recommend the adoption of it. The missing link, it
seems to me, and I hope I am not being too pessimistic
about it because I don't intend to be, but the missing
link at the moment is persuading these international
15 sporting federations to get on board, accept the charter,
and accept the IOC leadership.

Now, the Commissioner directed some
questions to you this morning, as did I, about how we do
20 this. Can you just help us to be a little more specific
as to just what moral suasion can be brought to bear on
these organizations, what actual pressures can be brought
to bear on them to make them see the light and accept what
you appear and Sport Canada and Fitness and Amateur Sport
25 appear to make is clearly a very significant document and

significant movement?

A. Yes. Well, I think there is several mechanisms that are important.

First of all, clearly the IOC in its relationship to the IF, its now, in a sense, up to the IOC to decide how strong it is going to be with the IF. It has, we believe, as we have stated, the ultimate trump card with the games. I think the history of the IOC is such that it would want to enter those discussions in a collaborative fashion, and the question remains how far the IOC would go. You could argue that that single step taken to its ultimate conclusion, which is the IOC demanding a common approach and a submission of plans on a quadrennial basis with an approval by the IOC without which the international federation would not be allowed to participate in the games. You could argue that that single step would do it.

However, I think accomplishing that step all at one is solely by the IOC acting alone is going to be very difficult. I think there needs to be ---

Q. Let me just stop you there just so I understand what you're saying. Is it this, that that ultimate step is to say to an international federation, we hold the keys to the ultimate club here, and not only are you going to accept the rules so far as the Olympic games

are concerned, concerning doping, you are going to accept these rules in your sport in international competition outside of the games, and unless you do, you don't get into the club ever four years?

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A. Correct. The IOC could go that far.

Whether they will is obviously a question mark, and if they did you could argue that that would -- is not totally, significantly bringing the IFs into a common approach when taken in conjunction with an out-of-competition testing commission, an independent authority attached to the IOC, if you will, doing testing around the world on an out-of-competition basis. The combination of those two I think would be extremely powerful and extremely influential in the IF.

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As I have said, I think that's a awfully difficult mouthfull to chew and swallow all at once. It is, I think, the ultimate and final image that we would like to see, certainly in the Federal Government, but to get there will likely require other kinds of advocacy and support and representation.

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I think one then can look at what the various countries of the world are doing within their country and how they are exhorting their own members to carry the challenge to the international federations. So we would like to think that the various countries that

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have become members of the charter would through their governments and through their national Olympic committees begin to influence the perspective of their separate national sport federations in each country, so that those national sport federations would carry their voice to the international federation that desire change towards a common approach was the goal, and they indeed wanted action.

Q. Let me just interrupt you there.

If we use the Canadian model that you have described in considerable detail, it seems to me it's easy, because if you have some international federation that is not accepting the charter, Canada, through Sport Canada, can say to the individual national sporting organization, if your international doesn't accept the charter and the implementation of it, we withdraw funding, but that card maybe could be played by Canada, but is it the kind of card that could be played by other countries, for example the United States.

A. Well, even let me start with your first point that the card could be played by Canada. I think it would be capricious and unfair for us to withdraw funding from a national federation of Canada simply because its international federation did not buy into the charter, when the Canadian federation may be totally in sympathy

and working to all the rules and procedures, and because the international federation won't play ball that we are going to go penalize the Canadian federation. I think that would be unfair.

5

Q. Fair enough.

A. However, when taken together, if many countries in joint agreement through the Council of Europe is one forum and others began to, amongst governments and their federations, talk about a common approach, that indeed large numbers standing up in a general assembly of an international federation and stating that they wanted action. Ultimately, again you could argue that if a significant number of nations stood up in the annual assembly meeting of the International Swimming Federation and said that unless the International Swimming Federation bought into a common world-wide approach, jointly with the IOC under the campaign we have talked about, that that majority of nations would withdraw from the international federation. I mean that would be a powerful demonstration. One nation doing that is unlikely.

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Perhaps more importantly, because I think countries and members are loathed to, in general terms, use the instrument of withdrawal, because it often not always accomplishes much, and clearly people are concerned about penalizing their own athletes who are

training hard and want to be part of the world games, that
more likely is that for a very powerful and strong
statement to be made by the leading nations, that one
doesn't need necessarily majority of nations. If you take
5 the individual sports, various sports have different
powers, some are common to all, but some sports have
different powers. Different nations that are stronger
competitors. So, one can imagine an international meeting
where, let's say, the 10 leading nations in swimming who
10 placed in the top 10, we will say in Seoul, that those
leaders all had stood up to make very strong statements
that they wanted the international federation to change,
you wouldn't necessarily need a majority. When you have
very strong nations demonstrating that kind of leadership
15 I think the impact can be considerable. When you also
understand that those same leading nations probably
through their representatives occupy powerful executive
leadership posts in the executive board who can usually --
or not usually but often if not usually make compelling
points and sway the general assembly. The combination of
20 those leading nations using their representation and
making statements and calling for advocacy and calling for
change within the international federation I think can be
a very powerful demonstration and could, I think,
undertake change. It would be difficult for an
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international federation to resist under that kind of push. I mean you can imagine if the Soviet Union, the United States, the GDR, West Germany and another three or four all said that they wanted the international ex-federation to change their approach and to work to an international approach consistent with the charter and working with the IOC's Medical Commission, that would be very difficult to resist. I think it would be a very powerful, have a very powerful impact.

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MR. ARMSTRONG: Thank you, very much, Mr. Makosky. Those are all the questions I have, Mr. Commissioner.

THE COMMISSIONER: Does any counsel wish to ask Mr. Makosky any questions? Mr. McCreathe?

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MR. McCREATH: No, thank you.

THE COMMISSIONER: Mr. Futerma? Do you wish to ask any questions.

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MR. FUTERMAN: Mr. Commissioner, I understand from Mr. Armstrong, that Mr. Makosky will be available after February 20th if counsel deem it necessary and advisable. So, under those circumstances, I have no questions of Mr. Makosky today.

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THE COMMISSIONER: Thank you. Mr. Makosky, I wonder if I could ask just a few questions to clarify some of the problems I see.

--- EXAMINATION BY THE COMMISSIONER:

5 Q. I certainly wanted to compliment you on the master you have. You have been just slightly over two years in this position and we can't help all but be impressed with the complete absorption you have of the subject and the great knowledge of it.

A. Thank you, sir. I hope this recording is reaching my superiors in Ottawa.

10 Q. Well, I told you I recommended you for the deputy, didn't I. But one of the matters that I am trying to think through is what I call the issues of responsibility.

15 Now, you have made your Ministry very commendable efforts to eliminate the use of drugs and banned practices in international competition and domestically as well. And that arises because there are obviously doping violations which bring up the issue. And I am reading your material, I can assume that the initial 20 responsibility for for an athlete to conduct himself adequately is his or hers, but obviously of recent date at least the Government of Canada has felt that it also has a responsibility to move in this field.

A. That's correct.

25 Q. And to seek to eliminate the use of

drugs and banned practices both domestically and internationally in athletic competitions?

A. Correct.

Q. And you are seeking to establish rules, 5 as I understand it, and your concern I gather on the domestic scene preliminarily is the question of the ethics and moral values of sports and the health of those who may consume drugs or banned practices. But as I understand it, perhaps I should address Ms. Hoffman, domestically you 10 lay down the rules but the implementation of the rules is left to the Sports Federations; is that right?

A. That's substantially correct. There will be more detail on the nature of our program, but in general terms we ask that the individual sport federations 15 in Canada submit to us a plan for what their sport intends to undertake to address doping in their sport. And we engage in discussions with them and indicate our approval or not of this plan.

Q. Well that's sort of still establishing 20 the rules, as it were, and modified on individual application I guess?

A. Yes.

Q. I have read some of the material in 25 this case, but we haven't come to it yet.

A. Yes.

Q. But setting down the rules, has the government any responsibility for policing those rules to see that they are complied with?

A. Well --

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Q. And if so, do you address that issue at all?

A. Yes. I think we have to this point assumed some responsibility.

10

Q. Well, so far I see you are assuming responsibility for laying down the rules and pressing upon the Sports Federation their obligations and their obligation to assure their members that they don't violate the doping rules?

A. Yes.

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Q. You require contracts I think for setting that out?

A. Yes.

Q. But what else do you do?

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A. Well, we do evaluate the degree to which the sport body complies with the plan that they have submitted to us and we agree to.

Q. Do you have, I don't say you should have, maybe -- you don't have inspectors, do you?

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A. No. I mean our level of evaluation is really whether or not in general terms the sport body has

launched an education program, whether or not the sport body once we have agreed to a plan for testing on whatever frequency, whether the sport body has complied with that.

5 Q. Well, I notice that one of the things you highlight is this question of ethics and good conduct. I think is that the word I have seen here someplace?

A. Yes.

10 Q. Do you have a program for that or do you just tell the Sports Federation now you have got to explain to all these athletes how to you conduct themselves?

A. Yes.

Q. And behave themselves, or do you actually do anything about it?

15 A. We have developed and collected a number of education materials, reading pieces et cetera, which we provide in quantity to the sport so they can distribute them to their athletes.

20 I think it's fair to say that we leave the sport body to their own resorts to distribute and to engage any other types of processes and educative fashion.

Q. What about health hazards to the athletes? Do you have any material submitted on that?

25 A. Yes. They are materials in our anti-doping program kits that are distributed to athletes

that deal with the health question. We have additionally
and this is now only becoming the intent to develop a more
aggressive national public campaign through the fair play
commission to address the ethical conduct of sport. So,
5 in that sense the government will be taking on a kind of
national, more umbrella general awareness in education
campaign, but the direct relationship with the athlete is
generally by the sport body.

Q. Well having given consideration to what
10 I might call the climate which would tempt athletes to
achieve so inconsistent with the way they have been
developed, I am thinking of the commercialism of so-called
amateur sport, I am not being naive, but do you watch or
control that at all?

15 A. By that I am assuming the kind of
transfer of funds or relationships through commercial
sponsors with athletes. We, to date, have not really had
any involvement with that.

Generally speaking, such funds and such
20 monies are part of the relationship of the national
federation with the athlete. Generally speaking,
international federations require that the national sport
body obtain or be the recipient of such funds and maintain
the funds in a trust until the athlete has completed his
25 career with the federation. And to provide those monies

that are appropriate to the training and expense costs. This is the general model. We don't police that in any sense. We consider that to be a matter of concern between the sport federation and the athlete.

5

Q. And do coaches or physicians or other people who work with athletes, do they have to be accredited by Sports Canada at all or is that left to the individual federation?

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A. Again it's left to the individual federations. There is a program of accreditation which is not a requirement. It is a five-level certification program which is I would say working more at the lower levels and moving gradually up the system; whereas, the upper levels that involve national and international coaches, some would have received the courses and be certified, but the act of certification really just deals with the fact that they have been what might be called educated according to the certain practices. It does not involve professional standards or any other elements that one might consider to be certification and other endeavors in society. And that's controlled by the sport body and we don't have an impact on that.

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Q. To date, we don't have any program for out-of-competition testing, I gather?

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A. Yes, we do.

Q. We do?

A. Yes. Yes, we currently now do out-of-competition testing in the sports of the weightlifting and track and field.

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Q. Who is we?

A. The actual testing by, and there will be more detail supplied in this I guess, but the actually testing is carried out by Sport Medicine Counsel of Canada, which is an agency which we have an agreement with to engage the testing and the laboratory results are provided currently to the INRS Lab in Montreal.

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We are the agent, if you will, that first sits down with the sport body and agrees on the plan for such testing and the frequency and all of that. The actual testing is then carried out by the Sport Medicine Council of Canada and the INRS Lab.

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Q. And that's weightlifting. What other sport?

20

A. Track and field. Weightlifting was present prior to the Seoul Olympics; and track and field began sometime this fall.

Q. We will hear more about that later, I am sure.

A. Yes.

25

Q. Well, looking at the international

field, and at tremendous efforts you have made to obtain international co-operation, when you get to that level, you are not only now concerned about the ethics of our athletes and the health of our athletes, but whether there is a level playing field for them to participate in otherwise they would be tempted to try to make up the ground that they think others have done by cheating?

A. That's correct. And it's also, I think also, sir, if I may, unfair to all those athletes who are competing fairly and cleanly

Q. Now, at the present time, we have certain charters which I would say approved in principle by many countries. Right?

A. Correct.

Q. But the whole program is far from being implemented?

A. That's correct.

Q. And if it's not implemented, the object of the exercise cannot be achieved, that is we will not have a level playing field?

A. Correct.

Q. And where do we go from there?

A. If it's not achieved, you mean? Well, if the charter per se --

Q. Because it seems to me that's all the

efforts you have done are not going to result in the objective which you seek, unless this very -- I am talking about internationally now.

A. Yes.

5

Q. Unless it's implemented with the IOC leadership and the IOC doping commission and all the sports federation, in other words sort of coming on board and getting under this umbrella and complying with the rules?

10

A. Yes.

Q. Well, when I noticed the United States and Russia apparently have entered into a very important agreement including verification. I suppose the USSR and the US always seem to insist upon, what's holding it up and why can't Canada do that with all these countries? Why does the US and USSR have to go into sort of a bilateral agreement if there is such a hope for this charter?

15

20 A. Well, there is several questions in your observations, sir.

Q. I am just asking questions, I am just trying tying to clarify my thinking.

A. I understand. I think the charter is an important mechanism. It is not the only one.

25

Q. I think it really is. I commend you

for your efforts, it is a very noble program and very extensively and it reads, from what little I know about this, this reads very well.

A. But one could still argue that if countries simply signed the charter and there were no other actions to harmonize the approach internationally, that at that point in time, we would still have a lot of countries agreeing but potentially the international scene not agreeing. And if the international federation signed the charter which says by and large that they will undertake efforts with good intent to work with the IOC, it is still a ways away from them sitting down and actually working out the mechanisms and agreeing.

Q. But if the object is to assure level playing field and let's assume Mr. Armstrong is a weightlifter and he belongs to the Weightlifters Association or whatever it is, and the national one, and he may be the best in Canada, but if the International Weightlifting Association -- don't quote me to these acronyms that you use all the time.

A. Sure.

Q. If the international body won't adhere to this charter or some modified charter, then you can't assure a level playing field for weightlifters when they go to Europe to compete?

A. That's correct.

Q. Well, and Mr. Armstrong said, well,
then the government of course holds the clout over our
national association because you finance them, so would
5 you still finance our weightlifters to compete where you
haven't achieved a level playing field? I don't know what
the answer to that is. I understand you say it will be
unfair to sort of boycott but on the other hand, we read,
and I don't know how valid it is, but mitigating
10 circumstances said to exist that people take these drugs
or resort to other practices because it's the only way I
can win. And that's what we recognize by all this
international co-operation?

A. Yes. Well, we think I mean we are I
15 think significantly encouraged by the developments in the
last year to two years. And we think through the combined
efforts and pressures we have talked about that the IF
will eventually agree and be part of.

Q. Well, I gave a bad example because the
20 weightlifters seem to be taking the lead for an
international association from what you have told us in
doping control?

A. Yes, internationally.

Q. Internationally?

25 A. That's correct. At least by virtue of

their statements they have taken the lead; whether it will be effective or not may be another question.

5 Ultimately I guess if it came to the point where many international federations were joining in the fight and there was one or two that were not, we would, I think, continue to renew our efforts as a government through our sport bodies to continue to fight. I think we are loathe to engage the act of withdrawal. If you push me to the final image where there was a single sport that

10 was clearly not part of an international harmonized campaign and that sport was clearly having major problems in doping, and indeed it was clear that there was not a level playing field, I guess we would have to consider the option of indicating that Canada would want the national

15 federation to consider withdrawing and potentially using our financial leverage to do that.

I think I would emphasize again we think we have a lot of encouragement that suggests there is going to be action in the future that won't require that and we would want to be using all the means open to us to use other options.

20 Q. Well, you have only worked on it for a very relatively short time and you have made great progress.

25

A. I think so yes.

Q. I am just exploring government responsibility because also we spend a great deal of money.

5 What is the total budget of your department on an annual basis now?

A. Fitness and Amateur Sport is about \$70 million for both Fitness and Sport. The sports side in terms of contributions, financing we provide to the sport system, this fiscal year we are in right now is approximately \$52 million.

10 Q. That's distributed to sports organizations?

A. Correct.

15 Q. Does that include capital outlay too, for certain facilities?

A. We don't provide any -- well, generally speaking we don't provide any capital outlay. The only time we provide capital is for major games and those are separate line items such as the Commonwealth Games or 20 Olympics.

There is one exception within our budget and that is we provide one third of the capital cost of the Canada games which are held every two years. But that's in the neighborhood of -- we now capped that at 25 \$2 million. So once every two years now we provide a

\$2 million of our budget contribution to a host community for the Canada games. That's the only capital we provide.

Q. Going back to the original question on this area the government has assumed responsibility of sort of laying down the rules?

A. Yes, sir.

Q. But I gather only the sports federation could really enforce -- your department won't be able to do that or police them?

A. Well, I suppose --

Q. I hope it wouldn't be necessary, I am just wondering.

A. I suppose we could undertake to, it would be our preference that the sport bodies themselves police them. The Sport Medicine Council of Canada of course provides a level of policing to use your term in terms of the application of the test.

Q. Well, it's not the best word but enforcing the procedure --

A. I think we have got, sir, if I might, I think we have got the right combination of agencies engaged in principle in the right roles. And now the question is how do we make the application in control terms even more effective. I think there are other questions with regard to education that might bear upon

further investigation and asking further questions as to who might help with that. But in terms of the control aspect, testing and so on, I think in Canada we have developed some very good mechanisms. Canada's model I think is respected from what we know by many of the other leading nations in anti-doping as an excellent model.

5 Q. And I gather that it's your position that you favour in principle out-of-competition testing?

A. Very much so, I think.

10 Q. And --

A. There is, if I may say so, there is however a purpose to in-competition testing. It still gives a signal that there will be some regular testing in the sports as appropriate so that the events will be, if you will, protected for their legitimacy and that indeed it's a continuing case if you will that the agencies are still involved because with out-of-competition some athletes might go through a considerable period without being tested on -- if it's on and random basis and it's important that they continue to receive a signal on some level that at certain scheduled times there will be testing in competition.

THE COMMISSIONER: I want to ask you one question later on a different matter. I notice that you indicated if you're going to have out-of-competition testing, you can't test for everything. So I think you stressed anabolic steroids?

5

THE WITNESS: Correct.

THE COMMISSIONER: Has your Ministry considered working with the Ministry of Health to consider the rescheduling of anabolic steroids? As you know, it's a Schedule F drug or have you gone into that?

10

THE WITNESS: Yes.

THE COMMISSIONER: Which is the least regulated schedule in our Food and Drug Act?

THE WITNESS: Yes, that's right.

15

THE COMMISSIONER: And other countries are addressing that issue and I think I mentioned in my opening statement that perhaps some consideration may be made but that's not your department, I gather?

20

THE WITNESS: No, it's another part of the government. There may have been some discussions on that level that my officials could relate to. I don't have that information and I don't think they've been significant.

I might just perhaps clarify one point, sir.

25

When you talked about the nature of drugs that should be

tested for an out-of-competition testing, there is, I think, a good amount of good thinking going on that's looking at the question of what drugs are appropriate for testing during training time because in a competition certain drugs, such as an amphetamine, may only really be relevant at the moment of competition and not in training.

5 So, the sense of testing for different things is training because one wants to look at those that are most relevant to aid the training process and steroids
10 are in that category.

THE COMMISSIONER: Which may be different than actually the competition?

THE WITNESS: Correct. Correct.

15 THE COMMISSIONER: Thank you very much and we will probably have you back again. I appreciate your help very much.

THE WITNESS: Thank you.

THE COMMISSIONER: All right.

MR. ARMSTRONG: That's fine. I don't think
20 I have any questions, if Mr. Sojonky doesn't, arising out of that.

THE COMMISSIONER: Mr. Sojonky, any questions? I am sorry, any questions?

MR. SOJONKY: No, I don't, Mr. Commissioner,
25 thank you very much.

MR. PRATT: For neatness, Mr. Commissioner?

THE COMMISSIONER: Yes, Mr. Pratt.

5 MR. PRATT: If we have any questions to this witness we'll reserve them for the later portion, as per the understanding of Mr. Futerman.

THE COMMISSIONER: I will take a little bit of time myself. You have to go to Ottawa, don't you, you and Miss Hoffman? Shall we start now or start tomorrow morning?

10 MR. ARMSTRONG: We are in your hands. I know that both Mr. Makosky and Miss Hoffman have ...

15 THE COMMISSIONER: They have both banquets in Ottawa and the weather is kind of nasty. Would it be too much inconvenience for anybody if we adjourn now until tomorrow morning at ten o'clock? Miss Hoffman is the next witness?

MR. ARMSTRONG: She is.

THE COMMISSIONER: And Ms. Chown, you are taking Miss Hoffman?

20 MS. CHOWN: Yes, I am.

THE COMMISSIONER: All right. Well, tomorrow morning at ten o'clock.

---Whereupon the proceedings are adjourned to resume

25 January 13, 1989 at 10:00 a.m.

